

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*



March 2006
2005-113

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CALIFORNIA STATE AUDITOR

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March 23, 2006

2005-113

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the Bureau of State Audits presents its audit report concerning the operations of the State Water Resources Control Board's Division of Water Rights (division).

This report concludes that the division uses erroneous data from its electronic Water Rights Information Management System (WRIMS) to calculate some annual fees causing it to overcharge some fee payers and undercharge others. Although the division is seeking funding to replace its WRIMS, it must ensure that it addresses the data deficiencies we identified before it converts to any new system; otherwise its new system will continue to cause inaccurate annual fee calculations for some fee payers. In addition, the division's method of charging annual fees may disproportionately affect some fee payers who divert small amounts of water under multiple water rights. To address this concern, we suggest that the division change the method it uses to assess minimum annual fees by charging based on fee payer rather than by water right. Furthermore, the division charges some annual fee payers based on more water than they are authorized to divert because it does not factor in certain limitations that affect other water rights held by the same fee payer. We recognize that within the framework of what constitutes a valid regulatory fee, there may be a variety of ways to structure that fee. Thus, the changes that we suggest are not required in order for this fee to retain its validity as a regulatory fee.

Moreover, the division lacks effective management techniques to ensure that it processes water rights promptly. The process of approving a water right is complex and can be legitimately time-consuming. However, for the sample of permits and licenses we reviewed, it took the division an average of 3.3 years to issue the permits and 38.2 years to issue the licenses after permitting. According to WRIMS as of September 2005, the division had 617 pending applications—of which 93 percent were applications for permits—in process or waiting to be processed. Further, we found that the number of permits and licenses the division issued during the past five fiscal years has decreased significantly. Finally, the division may cause unnecessary delays because it has a poor process for tracking its pending workload and related files and is sometimes slow to approve and issue documents to be sent to applicants.

Respectfully submitted,

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SUMMARY

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.*

continued on next page . . .

RESULTS IN BRIEF

The mission of the Division of Water Rights (division) of the State Water Resources Control Board (water board) is to maintain a stable system of water rights in California that best develops, conserves, and uses in the public interest the water resources in the State, while protecting vested rights, water quality, and the environment. Water rights are legal entitlements that authorize an individual or entity to “divert,” that is take water from a specific source, such as a lake, stream, or pond, for beneficial use. Generally speaking, the division administers these rights by issuing permits and licenses for new water rights, processing petitions to change existing water rights (petitions), and monitoring water rights to ensure that holders of water rights adhere to their terms and conditions.

The California Water Code (Water Code), Section 1525, requires the division to develop and implement a fee structure to replace the funding it previously received from the State's General Fund. The statute requires that the division collect each year, via these fees, the amount necessary to support its operations. After considering a variety of methods for charging fees, the division chose to implement a fee structure generally composed of annual fees for water rights permits, licenses, and certain pending applications, and one-time filing fees for new permit applications, petitions, and other filings. The division's annual fees, which make up most of its funding, consist of a \$100 minimum fee plus a small amount per acre-foot, which is about 326,000 gallons of water, for authorized diversions exceeding 10 acre-feet per year. The division assesses other annual fees for petitions, water leases, and certain hydroelectric projects. The Water Code requires the water board to review and revise the 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.

However, the division does not accurately assess some annual fees using its Water Rights Information Management System (WRIMS), causing it to overcharge some fee payers and undercharge others. Some errors occur because the data the division uses to calculate the annual fees does not include the amount of storage authorized by the water right or because

- ☑ *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.*
 - ☑ *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 did not update its system to reflect the maximum annual diversion and relevant seasons and rates of diversion authorized by a fee payer's water right. The division also uses WRIMS to calculate the total fees that it needs to charge fee payers when revising its fees each year; however, because the system does not contain all the necessary data, it is unreliable for this purpose. For example, we found that the system did not capture a net of 7.3 million acre-feet that were authorized for a sample of 80 permits and licenses. However, we could not conclude from our sample whether the net effect of the total errors in the system resulted in an underreporting of authorized diversion. Nevertheless, it is clear that the system has errors that should be fixed.

The division is seeking to replace its current management information system with a new system that purportedly will deliver a variety of enhanced features currently unavailable in its existing system. However, the division must ensure that its current system contains all relevant information before it converts to a new system. If it fails to do this, the division will continue to use erroneous data to calculate annual fees for water rights holders.

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. We believe this approach would more precisely distribute the fees in proportion to the authorized diversion of water.

Further, the division does not factor in combined limitations placed on permits or licenses—those that affect other permits or licenses—held by the same fee payer, so it charges some fee payers based on more water than they are authorized to divert. For example, the sum of the acre-feet for one fee payer's water rights totaled 3.9 million more than the water diversion authorized when factoring in the combined limitation. When

comparing the actual fee calculation in fiscal year 2005–06 with the calculation it could have been if the combined limitation was used, the difference was a reduction in fees of \$116,400. We recognize that within the framework of what constitutes a legally valid regulatory fee there may be a variety of ways to structure that fee. The changes we are suggesting are not required in order for this fee to retain its validity as a regulatory fee.

Moreover, the division does not effectively track its pending applications, petitions, and the locations of its files to ensure that it processes water rights promptly. For the sample of 15 permits and licenses we reviewed, it took the division an average of 3.3 years to issue the permits and 38.2 years to issue the licenses after permitting. In addition, the number of permits and licenses the division issued during the past five fiscal years has decreased significantly. 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 it needs to send to applicants. External factors also contribute to the amount of time it takes to process a water right application, such as requests from the applicant to extend the time needed to complete a water project, protests from other affected entities, environmental review requirements, and the need for coordination with other state agencies that have responsibilities in this area. Finally, the division does not effectively track water rights files, so its staff may spend valuable time searching for files when they could be involved in more productive activities.

RECOMMENDATIONS

To ensure that its WRIMS contains all the necessary information needed to calculate annual fees accurately for the next billing cycle, the division should 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. This should be completed before the division's conversion to any new database system, so that the data are accurate and complete.

To more precisely distribute the fees in proportion to the annual fee payers' authorized diversion, the division should 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.
- Assess annual fees consistently to all fee payers with diversion limitations, including those with combined limitations, so that fee payers are not assessed based on more water than they are authorized to divert.

To ensure that it is able to process water rights promptly and maintain accurate and effective water rights records, the division should:

- 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.
- Develop procedures for improving the timeliness of management review and issuance of documents.

To ensure that its tracking systems for pending applications and petitions are complete and accurate, the division should review its pending workload and update the systems to reflect current information. The division also should strengthen its procedures to ensure that staff maintain the accuracy of the data in the systems.

AGENCY COMMENTS

The water board stated that it is seeking funds to upgrade its computer system, which it believes will enhance the division's operations by ensuring that the new system contains improved and relevant information both with respect to water right data and tracking data. The water board also stated that it is in the process of correcting errors we identified and that it will bring our recommendations for fee program improvements to the water right stakeholders as part of the water board's next revision of the fee regulations. The water board stated that it will work with those stakeholders toward agreement on our recommendations. ■

INTRODUCTION

BACKGROUND

California's system of water rights is complex due to the inherently dynamic nature of the resource. The water itself belongs to the people of the State and cannot be owned by private individuals, but individuals and entities can acquire the right to use unappropriated water in accordance with statutory and common law. Unappropriated water is any available water flowing in a stream that is not claimed under riparian rights, which usually come with ownership of land bordering a water source, or other prior water rights.

Article X of the California Constitution generally states that the use of all appropriated water is a public use and is subject to the regulation and control of the State. The State Water Resources Control Board (water board) is responsible for preserving, enhancing, and restoring the quality of the State's water resources and ensuring the proper allocation and efficient use of these resources. The water board's Division of Water Rights (division) administers water rights, which are legal entitlements authorizing an individual or entity to divert water from a specific source—such as a stream, lake, or pond—for a beneficial, nonwasteful use. The division has administrative authority over surface water and some groundwater appropriations initiated after 1914, which is the date the Water Commission Act set forth the State's appropriative rights system. The division is responsible for ensuring that the State's water resources are put to beneficial use while protecting prior water rights, water quality, and the environment. In addition, the division has jurisdiction to enforce provisions of the California Constitution and the California Water Code (Water Code) prohibiting the waste or unreasonable use of water.

An individual or entity can acquire a water right from the division by submitting an application to take water from a water source. The division processes the application and, upon approval, issues a permit that specifies the conditions under which the applicant can take and use water. Later, after

Beneficial Uses of Water

Aquaculture—Raising fish or other aquatic organisms not for release to other waters.

Domestic—Water used by homes, resorts, or campgrounds, including water for household animals, lawns, and shrubs.

Fire protection—Water to extinguish fires.

Fish and wildlife—Enhancement of fish and wildlife resources, including raising fish or other organisms for scientific study or release to other waters of the State.

Frost protection—Sprinkling to protect crops from frost damage.

Heat control—Sprinkling to protect crops from heat damage.

Industrial use—Water needs of commerce, trade, or industry.

Irrigation—Agricultural water needs.

Mining—Hydraulicking, drilling, and concentrator table use.

Municipal—City and town water supplies.

Power—Generating hydroelectric and hydromechanical power.

Recreation—Boating, swimming, and fishing.

Stockwatering—Commercial livestock water needs.

Water quality control—Protecting and improving waters that are put to beneficial use.

Source: *A Guide to California Water Right Appropriations*, State Water Resources Control Board, January 2001.

a field inspection, the division issues a license confirming the water right. Once acquired, an appropriative right can be maintained only by continuous beneficial use of water. The text box describes the variety of beneficial uses for which water rights can be used.

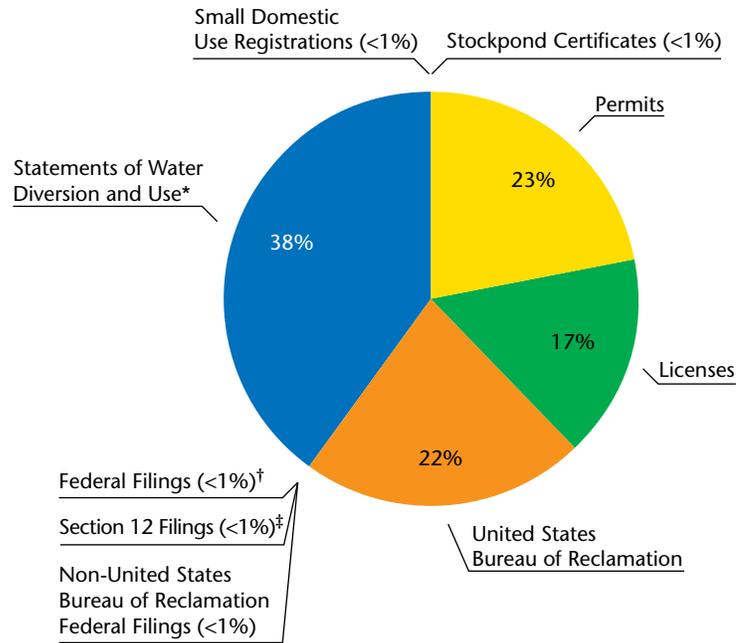
Generally speaking, the division issues permits and licenses for new water rights, approves changes to existing water rights, and conducts ongoing enforcement monitoring of water rights under its jurisdiction. Holders of riparian water rights or other water rights obtained before 1914 are not required to obtain a permit. Instead, holders of these rights may file statements of water diversion and use (statements) placing the division on notice that the holders claim such rights. The division also issues registrations for small domestic use and livestock pond use, which are appropriative water rights that are allowed under limited circumstances. Finally, the division must maintain files of groundwater claims that are submitted by persons who, after 1955, extract more than 25 acre-feet in any year within the counties of Riverside, San Bernardino, Los Angeles, and Ventura. Figure 1 shows the composition of the various types of water rights in the State.

In addition, the federal government and the State hold water rights as reserved rights. For example, when the federal government reserves public

land for uses such as Indian reservations, military reservations, national parks, forests, or monuments, it also implicitly reserves sufficient water to satisfy the intended purposes. The California Department of Water Resources is authorized under the Water Code to file applications for water that, in its judgment, is or may be required in planning for the development, utilization, or conservation of the water resources of the State. These applications are transferred to, and held by, the water board and may be assigned to other entities, such as state agencies, commissions, and departments or the federal government, through a petition process.

FIGURE 1

**Distribution of Water Rights by Diversion
As of May 2003**



Source: State Water Resources Control Board.

Note : This chart represents the water rights data contained in the water board’s database at the time the chart was prepared. The section of the chart labeled “Statements of Water Diversion and Use” (statements) represents riparian and pre-1914 users of water, over which the water board does not have permitting authority. Although these users are, with some exceptions, required to provide the water board with statements of their use under their claimed rights, the water board is aware that many of these water users have not done so. The water board records the amount claimed on these statements because only the courts have jurisdiction to confirm the existence or extent of these claims.

* Recordations of groundwater use submitted by some users and adjudicated water rights fall into this category but are not quantified in the water board’s database.

† Federal filings are nonreserved water rights for federal uses.

‡ Section 12 Filings refer to Section 12 of the Water Commission Act, Chapter 586, Statutes of 1913. This section provided a means whereby existing incomplete appropriative rights could be given a certificate setting a schedule of completion.

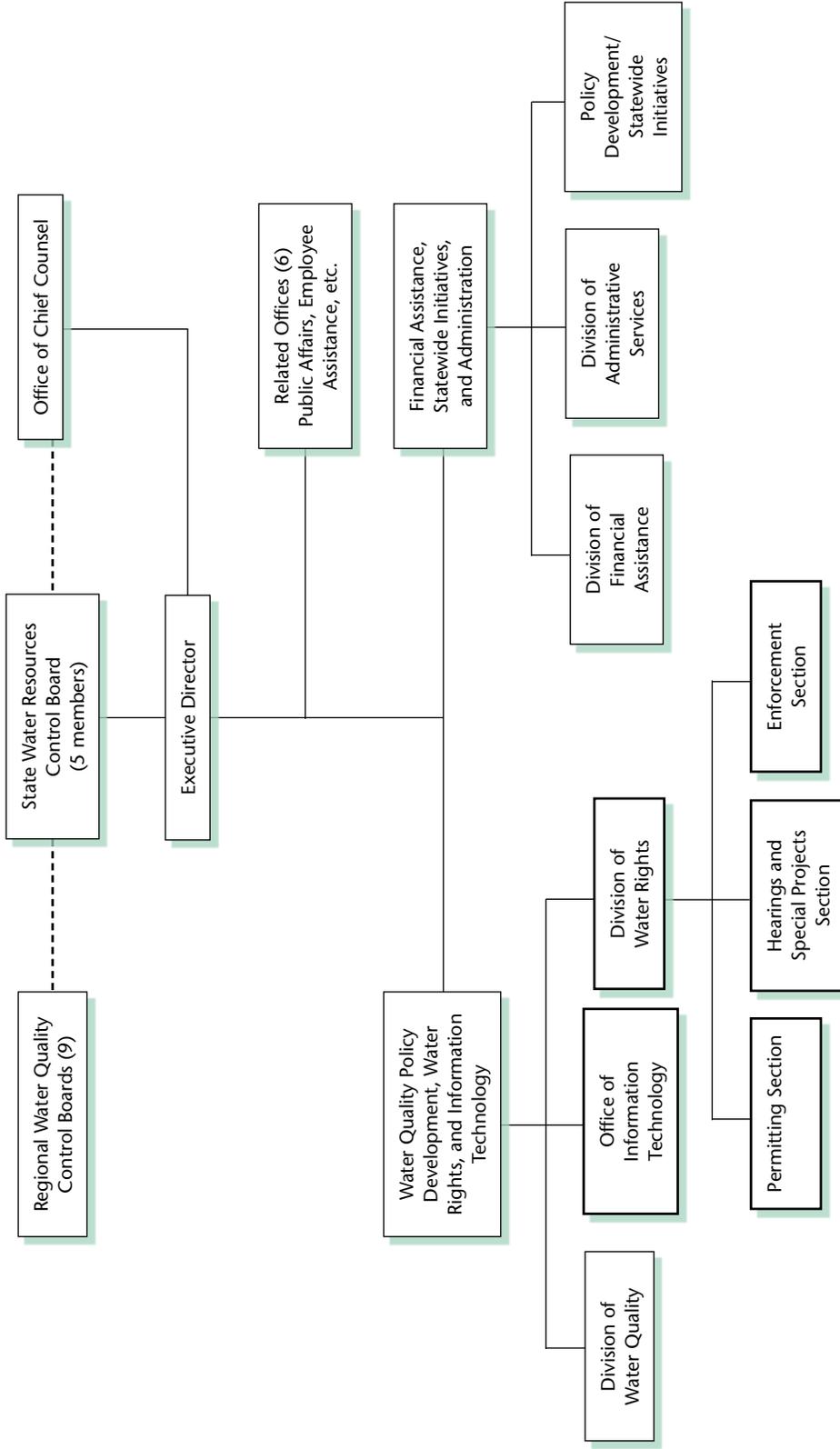
ACTIVITIES OF THE DIVISION

As illustrated in Figure 2 on the following page, the division consists of three sections that are responsible for conducting specific activities:

- Permitting, which processes water rights applications and petitions to change existing water rights (petitions).

FIGURE 2

Organizational Structure of the State Water Resources Control Board



Source: State Water Resources Control Board.

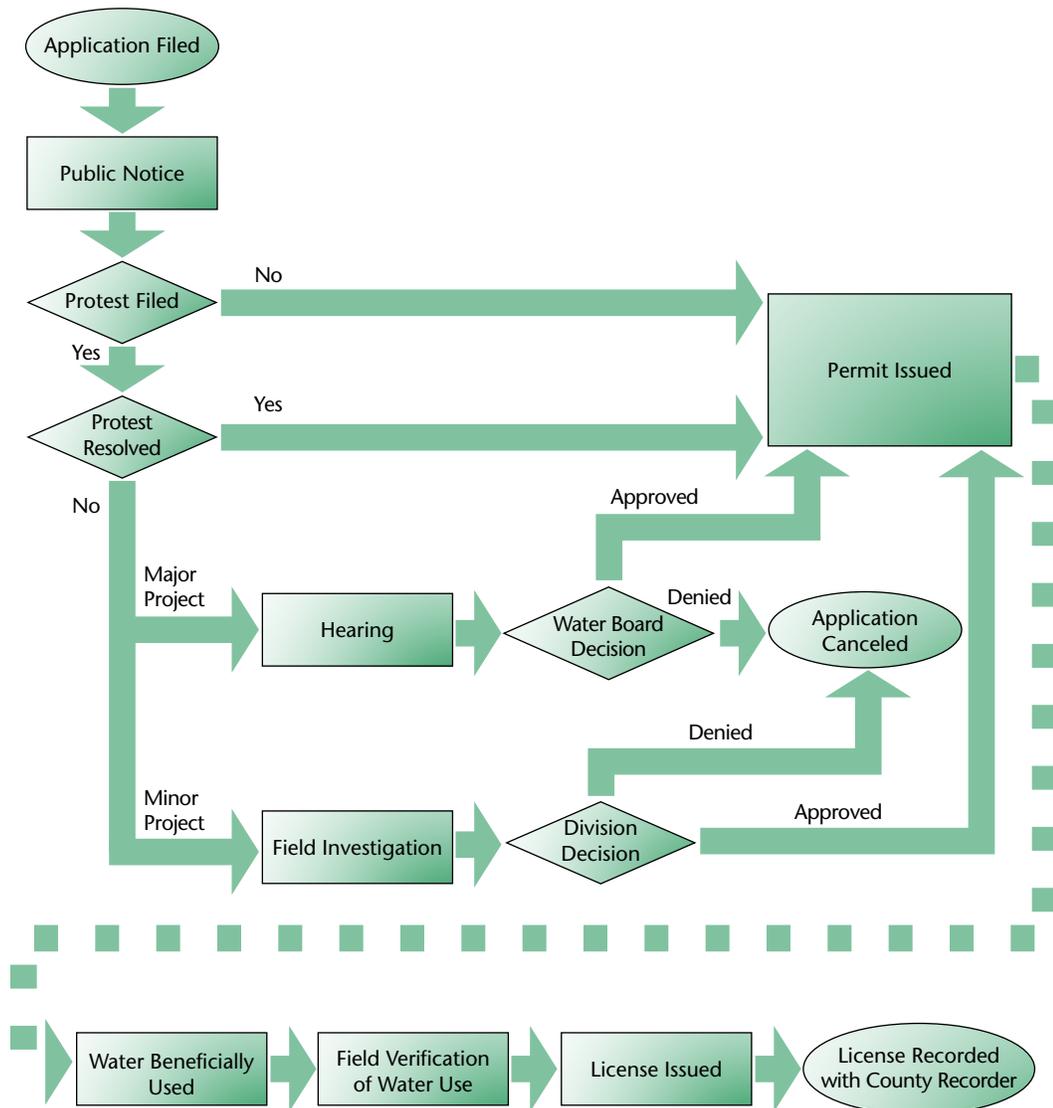
Note: Functions appearing in bold are those we discuss in this report.

- Enforcement, which conducts licensing, compliance, and complaint inspections.
- Hearings and Special Projects, which assists the water board in conducting hearings, prepares certain water quality inspections, and provides administrative support to the division.

As shown in Figure 3, the process of issuing a water right requires several steps. A completed application for an appropriate water right, once submitted to the division, is

FIGURE 3

The Process to Obtain a Water Right



Source: State Water Resources Control Board.

checked for completeness. The division accepts the application as complete or rejects it with a notice of deficiency to the applicant, who may correct and resubmit the application.

Upon acceptance, the division requires the applicant to notify the public and interested stakeholders of the application. Depending on the size of the proposed project, the applicant must physically post the notice near the project's proposed site or publish the notice in a newspaper at least once a week for three consecutive weeks. A protest period of 40 or 60 days, depending on the size of the proposed project, follows the issuance of the public notice, although the division can extend this protest period if it deems such an extension to be necessary. The division then evaluates protests received from the public and accepts or rejects them. The applicant must respond to protests in writing and attempt to reach agreements so that protests are resolved. Protest resolution may involve informal meetings, field investigations, and water board hearings.

Upon resolution of protests and completion of environmental review, for which it must follow the requirements of the California Environmental Quality Act (CEQA) and the Water Code, the division issues a permit to the applicant to appropriate water for beneficial use. The terms of the permit give the permit holder a specified period of time to achieve full beneficial use of the appropriated water. Permit holders, upon completing construction of the necessary diversion or storage under the terms of the permit, are required to report the completion to the water board. The division performs a prelicensing field verification of the permitted project and it may then issue a license for the documented diversion amount and beneficial use of water or revoke the permit. Once licensed, the licensee is required to file project reports with the division when requested by the water board.

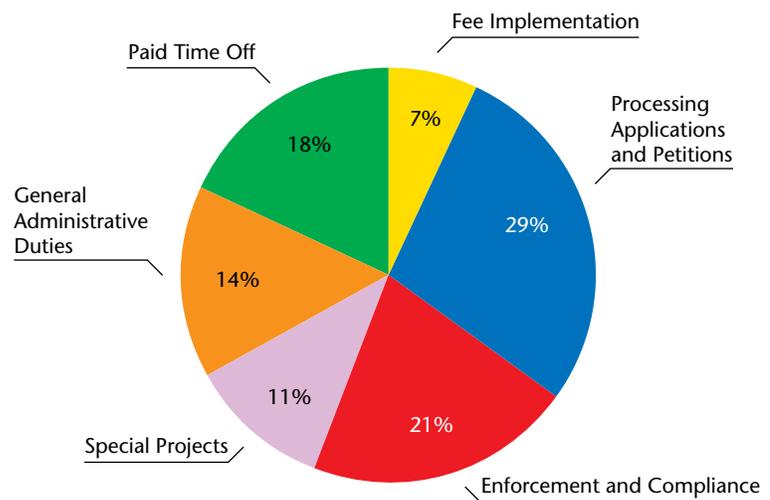
Figure 4 shows how the division's employees charged their time in fiscal year 2004–05. Using the division's time sheet information for this period, we identified six general categories of activities that were charged to a variety of related activity codes: fee implementation, processing of applications and petitions, enforcement and compliance, special projects, general administrative duties, and paid time off. Processing of applications and petitions generally includes activities related to the processing of water rights applications and petitions, the small domestic use and livestock pond registration programs, statements of water diversion and use, and groundwater

recordations. Activities in the enforcement and compliance category include receiving complaints of possible illegal water diversion, conducting research and field investigations, documenting findings and recommended actions, and issuing cease-and-desist orders or financial penalties against illegal diverters. An example of a special projects activity would be preparing an analysis for a water board staff report of the periodic review of the water quality control plan for the San Francisco Bay/Sacramento–San Joaquin Delta Estuary, commonly referred to as Bay-Delta.

As shown in Figure 4, the division charged half of its time to processing applications and petitions and to enforcement and compliance related activities. Representing 11 percent of its time, the special projects category included the Bay-Delta water quality project, reimbursable work involving water rights activities for the U.S. Bureau of Reclamation, and various other tracking and water quality projects. The remainder of the time charged was generally for administrative activities, fee implementation, and time off.

FIGURE 4

**Time Activities of the Division of Water Rights
Fiscal Year 2004–05**



Source: Compilation of division time records.

THE DIVISION MAINTAINS WATER RIGHTS INFORMATION IN SEVERAL ELECTRONIC DATABASES

The division uses several databases to store water rights information and to track its pending workload. The primary electronic source of water rights information is the Water Rights Information Management System (WRIMS), which consists of nearly 39,000 records that generally pertain to permits and licenses, certain groundwater recordations, statements, and registrations held by individuals and entities in the State. The division converted its previous electronic management information system to WRIMS in 1994. WRIMS is a relational database consisting of a set of tables, which in turn contains numerous records. Each record comprises various fields, which hold information relevant to the water rights process. Data in one or many tables are linked with data in other tables in the database. For example, name and address data for a water right holder in one WRIMS table are linked to a particular permit or license number in another table, which is also linked to specific information in still other tables about that individual water right, such as amount of diversion.

The division uses other database systems for tracking pending applications and petitions. These internal tracking databases exist to provide division management information about staff workload assignments and progress, to record protests, and to store historical data about pending applications and petitions. The division indicated that it uses other databases to maintain information on correspondence sent and received by the division, and Geographic Information System data for identifying water rights.

FEES SUPPORT THE DIVISION'S OPERATIONS

Before January 1, 2004, the division received most of its funding through the State's General Fund. However, in its *Analysis of the 2003–04 Budget Bill*, the Legislative Analyst's Office (legislative analyst) recommended that the division generate revenues from fees to support its operations. The legislative analyst noted that several other states had a more comprehensive water rights fee structure than California in terms of the proportion of program costs covered by fees, and had suggested making the change from a General Fund to a fee-based water rights program as far back as 1993. According to the legislative analyst, "In most cases, the water provides some form of economic benefit to the water rights permittee. For example, a municipal

water district may request an increased diversion to serve a new housing subdivision, or an agricultural business may wish to divert additional water to irrigate new land put into agricultural production.” In addition, the legislative analyst stated that because the water board is charged with ensuring that applications for new water rights do not cause harm to any other existing water rights holder and with conducting compliance inspections of existing water rights, the program provides ongoing benefits directly to water rights holders.

In 2003, the Legislature passed and the governor signed Senate Bill 1049, which added, in pertinent part, sections 1525 through 1560 of the Water Code and modified various other code sections. 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. This section 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. Water Code, Section 1530, requires the water board to periodically adopt emergency regulations related to the fees. These regulations also must be considered by the Office of Administrative Law.

Table 1 on the following page shows the division’s fee schedules for the past three fiscal years. The division designed its approach so that it generates most of its revenue from annual fees. Annual fees for permits, licenses, and certain pending applications consist of a \$100 minimum fee plus a fixed rate per acre-foot of water authorized for beneficial use in excess of 10 acre-feet.¹ The division assesses other annual fees for petitions, water leases, and certain hydroelectric projects. Filing fees consist of one-time fees related to applications, certain petitions, and for other filings as we show on the table. The division considered the feasibility of several alternatives, such as a fee-for-service approach, fees based on actual water usage, and variable fees based on direct diversion and storage.² The division also conducted public meetings to solicit input from stakeholders.

¹ An acre-foot of water is nearly 326,000 gallons.

² The total amount of water that can be diverted under a permit or license can include both direct diversion and storage. Direct diversion is the taking of water for immediate use and storage is the diversion of water into a reservoir or other holding facility.

TABLE 1

Fee Schedule Summary

Annual Fee Categories (Collected by State Board of Equalization)			
Fee Category	Fiscal Year 2003–04 Fee	Fiscal Year 2004–05 Fee	Fiscal Year 2005–06 Fee
Permit and license annual fees*	Greater of \$100 or \$0.03 per acre-foot per annum	\$100 plus \$0.025 per each acre-foot greater than 10 acre-feet	\$100 plus \$0.03 per each acre-foot greater than 10 acre-feet
Pending application annual fee [†]	Greater of \$100 or \$0.03 per acre-foot per annum	\$100 plus \$0.025 per each acre-foot greater than 10 acre-feet	\$100 plus \$0.03 per each acre-foot greater than 10 acre-feet
Petition annual fee [‡]	\$1,000	\$1,000	\$1,000
Water lease annual fee (for leases under Water Code, Section 1020 et seq., involving water districts)*	Greater of \$1,000 or \$10 per acre-foot	\$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	\$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
Projects under review for 401 certification for FERC licensing	\$500 plus \$0.085 per kilowatt	\$1,000 plus \$ 0.15 per kilowatt	\$1,000 plus \$ 0.13 per kilowatt
Projects issued FERC licenses pursuant to 401 certification	\$10 plus \$0.01 per kilowatt	\$100 plus \$0.015 per kilowatt	\$100 plus \$0.01 per kilowatt
One-Time Fee Categories (Collected by Water Board)			
Fee Category	Fiscal Year 2003–04 Fee	Fiscal Year 2004–05 Fee	Fiscal Year 2005–06 Fee
Application ^{§II}	Greater of \$1,000 or \$10 per acre-foot per annum	\$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	\$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 \$410,000, whichever is less
Application for small hydroelectric		\$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	\$1,000
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	\$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	\$5,000 in addition to application fee
Applications or petitions filed between July 1, 2003, and January 1, 2004	Difference between application or petition fee and fees paid previously	Difference between application or petition fee and fees paid previously	Difference between application or petition fee due pursuant to regulations in effect on January 1, 2004, and fees paid previously
Change petition	\$1,000	\$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 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 \$5,150, whichever is less
Change petition pursuant to Water Code, Section 1707	\$850	\$850	\$850
Change petition involving a transfer of water pursuant to Water Code, sections 382, 1701, 1725, or 1735 ^{ll}	\$0.30 per acre-foot	\$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	\$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 \$410,000, whichever is less

One-Time Fee Categories (Collected by Water Board)			
Fee Category	Fiscal Year 2003–04 Fee	Fiscal Year 2004–05 Fee	Fiscal Year 2005–06 Fee
Time extension petition ^{ll}	\$1,000	\$1,000	\$1,000
Wastewater petitions ^{ll}	\$1,000	\$1,000	\$1,000
Request for release from priority (state filing) ^{ll}	\$5,000 in addition to application fee	\$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	Fee based on project specific costs
Water lease application (for leases under Water Code, Section 1020 et seq., not involving water districts)	Greater of \$1,000 or \$10 per acre-foot leased	\$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	\$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
Small domestic and stockpond registration/5-year renewal fee	\$250/\$100	\$250/\$100	\$250/\$100
Proof of claim under Water Code, Section 2575 et seq.	\$500	\$500	\$500
Groundwater recordation under Water Code, Section 4999 et seq.	\$115	\$115	\$115

Source: State Water Resources Control Board.

- * 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.
- † Due under specific circumstances such as: project is initiated prior to the water board issuing a permit authorizing the diversion; applicant requests a delay in processing application; applicant is lead agency under 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.
- ‡ Due under specific circumstances such as: petitioner diverts water prior to the water board 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.
- § 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.
- ll This filing fee is inclusive of a nonrefundable \$250 fee for an initial review.

Although the division collects one-time fees directly, Water Code, Section 1537, requires the Board of Equalization (Equalization) to collect annual fees on the division’s behalf. Equalization, a state agency charged with collecting sales and property taxes and distributing revenue to other state agencies and local governments, possesses the expertise to administer the division’s annual fee assessment to water rights holders. In the first six months of the annual fee program, the division and Equalization had a written agreement in place addressing the assessment and collection of water rights fees. Currently, Equalization receives a direct budget appropriation to fund its fee collection activity on behalf of the division.

THE WATER BOARD IS IN LITIGATION INVOLVING ITS FEE STRUCTURE

The water board is currently involved in litigation over the validity of the water rights fee. The petitioners in this litigation—the California Farm Bureau Federation, the Northern California Water Association, and others—assert that the water rights fee does not fall within the parameters of a valid regulatory fee and that it is an unconstitutional tax because it was enacted by a majority vote of the California Legislature, rather than a two-thirds vote. At the trial court level, the Superior Court rejected the petitioners' arguments and upheld the water rights fee as a valid regulatory fee. This case is being appealed.

The California Constitution requires that taxes be enacted by a two-thirds vote of the Legislature. Taxes are raised to provide general revenue for the governmental entity and are generally compulsory. In contrast, a regulatory fee may be enacted by majority vote. A regulatory fee is a charge that is imposed on a defined class of persons who engage in an activity that is subject to government regulation or control. The regulatory fees paid by that defined class of persons are designed to cover the cost of regulating their activity or to address the potential harm caused by their activity.

A number of judicial decisions have clarified the parameters of what constitutes a valid regulatory fee. In one California Supreme Court decision on this issue, *Sinclair Paint v. State Board of Equalization*, the court upheld the imposition of a fee on the manufacturers of products contributing to environmental lead contamination to cover the costs of addressing the harmful effects of childhood lead poisoning. The court held that the fees were valid regulatory fees because they were imposed to mitigate the actual or anticipated adverse effects of the fee payers' operations, and bore a reasonable relationship to those adverse effects.

In another appellate decision several years later, the court upheld the imposition of a flat fee on those who submit project proposals to the Department of Fish and Game (Fish and Game) for environmental review. The court found that it was not necessary for there to be a direct correlation between the amount of a fee imposed on a specific payer and the benefits received or burdens imposed by the payer's activity. The court concluded that as long as the cumulative amount of the fees does not surpass the cost of the regulatory program or service and there is a reasonable basis to justify distributing the cost among fee payers, the fee would not be considered a tax just because each payer paid a flat, or fixed, amount.

SCOPE AND METHODOLOGY

The Joint Legislative Audit Committee (audit committee) requested that the Bureau of State Audits conduct an audit of the operations of the division. 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 CEQA 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; (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 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.

To determine whether the division, in carrying out its roles and responsibilities, complies with CEQA and other relevant laws, we examined the division's policies and procedures. We also researched relevant laws, rules, regulations, and various case law relevant to the issues. We tested a sample of recently issued permits and licenses and pending applications to determine whether the division complied with various sections of the Water Code, CEQA, and the California Code of Regulations.

To evaluate the timeliness and effectiveness of the division's processing of applications for new water rights permits (applications) and petitions to change existing water rights permits, we examined a sample of recently issued permits and licenses, pending applications, and petitions. Specifically, we calculated the number of days it took the division to issue a permit or license. We also determined the length of time it took the division to process an application through various phases, such as the number of days it took the division to record the receipt of an application, accept an application, and send noticing instructions to applicants. We reviewed relevant correspondence in each file to ascertain the factors that might have caused any delays, if applicable. In addition, we obtained electronic data from the division's tracking

databases for pending applications, environmental review, and petitions. We also obtained data from the division's electronic bar-code system used to track the location of water rights files. The U.S. Government Accountability Office (GAO), whose standards we follow, requires us to assess the reliability of computer-processed data. Based on our tests, we found that the data contained in these tracking databases are not reliable for the purpose of tracking the progress and status of the division's workload. Therefore, we did not use these data to draw conclusions in these areas. Furthermore, we determined the bar-code system to be of undetermined reliability, due to the lack of data entry controls, to track the location of the division's water rights files.

To 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, we reviewed and analyzed a sample of staff time sheets and the division's timekeeping reports for fiscal year 2004–05. We summarized the division's time activities for fiscal year 2004–05 by grouping related activities into six main categories: fee implementation, processing of applications and petitions, enforcement and compliance, special projects, general administrative duties, and paid time off.

To identify the extent of any demands placed on the division's resources by other agencies, including Fish and Game, and by other interested parties that have not filed applications and petitions, we interviewed the division's management staff and reviewed its policies and procedures. Our research did not identify any significant demands, other than the normal protest process, placed on the division's resources by other entities, such as Fish and Game. The Water Code requires the water board to notify Fish and Game of any application for a permit to appropriate water. To defray the costs of identifying streams and providing certain studies, the Public Resources Code generally requires holders of riparian and appropriative water rights to pay a filing fee of \$850 to Fish and Game upon application to the water board if there is a diversion of water from any waterway in which fish reside. The division collects this fee and forwards the money it receives to Fish and Game.

To determine how the division established its new fee structure, we interviewed the division's staff and reviewed relevant analyses prepared by the division. We reviewed documents

surrounding the division's lawsuit with the California Farm Bureau Federation, the Northern California Water Association, and others. We obtained electronic data from the division's WRIMS and tested a sample of water rights to determine whether the data in WRIMS are complete and accurate. We also performed analyses on several data fields to ascertain the reliability of the data in accordance with the GAO's standards for assessing the reliability of computer-processed data. Based on our review, we found that some of the data contained in WRIMS are not reliable for calculating annual fees. Specifically, we found that one of the primary elements used to calculate annual fees does not always reflect the authorized diversion specified on a permit or license. We also found that WRIMS does not use all the necessary information, such as multiple seasons of diversion and different rates of diversion, to calculate annual fees properly. Consequently, WRIMS uses erroneous data to calculate some annual fees. However, we found the data sufficiently reliable for the purposes of analyzing the total number of permits and licenses in the system.

In performing our audit and in reaching conclusions about the "reasonableness" and "fairness" of the fees, we have taken various judicial decisions and the current litigation into account. We acknowledge that within the framework of what constitutes a valid regulatory fee there may be a variety of ways to structure that fee. For example, the judicial precedent in this area does not require that there be a direct correlation between the amount imposed on a specific payer and the benefits received or burdens imposed by the payer's activity, but this does not mean that a valid regulatory fee cannot be structured this way. Throughout this report, to the extent that we make recommendations regarding ways of restructuring a fee, we acknowledge that these changes are not required in order for that fee to retain its validity as a regulatory fee. Rather, these recommended changes are designed to more precisely distribute the fees in proportion to the fee payers' authorized amount of diversion.

To determine what procedures and mechanisms the division has in place to review the fee structure and modify the fees when necessary, we reviewed the relevant laws, rules, and regulations. We analyzed the division's process of modifying its fee structure and reviewed pertinent supporting worksheets and calculations it prepared. We focused the majority of our work on annual fees related to permits, licenses, and pending applications because these fees provide most of the division's funding. ■

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CHAPTER 1

The Division of Water Rights Uses Erroneous Data to Calculate Some Annual Fees, and May Charge Some Holders of Multiple Water Rights Disproportionately High Fees

CHAPTER SUMMARY

The Division of Water Rights (division) of the State Water Resources Control Board (water board) did not accurately assess many of the annual fees it calculated using its Water Rights Information Management System (WRIMS), causing it to overcharge some fee payers and undercharge others. Of the 80 water rights in our sample, the division undercharged the holders of 10 of the water rights by a total of \$125,000, and it overcharged the holders of eight of the water rights by a total of \$1,300 over a two-year period. 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. The WRIMS data used to calculate the fees does not contain all the data necessary for the annual calculations it performs to determine its fees, so it is unreliable for this purpose. Furthermore, based on our review of a sample of water rights, we found that the system did not capture a net of 7.3 million acre-feet that had been authorized. However, we could not conclude from our sample whether the net effect of the total errors in the system resulted in an underreporting of authorized diversion. Nevertheless, it is clear that the system has errors that need to be fixed.

The division is seeking to replace its current management information system with a new system that purportedly will deliver a variety of enhanced features currently unavailable in its existing system. However, it must ensure that its current system contains all relevant information, such as accurate maximum annual diversion amounts and seasons of diversion that are specified on permits and licenses, before it converts to a new system. If not, the division will continue to use erroneous data to calculate annual fees for water rights holders.

Moreover, the division's method for calculating annual fees may disproportionately affect fee payers that divert small amounts of water. The division intended, in part, to distribute the cost

of regulation in proportion to the diversion of water. However, because the division charges a \$100 minimum annual fee for each individual water right, fee payers who hold multiple water rights with small authorized amounts of diversion pay disproportionately more than those that hold a single water right with the same or a greater amount of diversion. Although we agree that a minimum fee is reasonable, the division could address this issue by charging a single minimum fee to each fee payer instead of for each water right. Finally, the division charges some fee payers based on more water than they are authorized to divert.

THE DIVISION CONSIDERED A VARIETY OF METHODS FOR CHARGING FEES

In deciding how to implement the fee-based system required by the California Water Code (Water Code), Section 1525, the division considered a number of methods. It ultimately chose to base the annual fees it charges for permits, licenses, and certain pending applications on “face value,” which is the total amount of water that can be diverted in any year. The division assesses other annual fees for petitions to change existing water rights (petitions), water leases, and certain hydroelectric projects. Further, the division increased one-time filing fees for applications, petitions, and other filings. In complying with this statute, the water board approved the first set of emergency regulations regarding its fiscal year 2003–04 fees in December 2003.

Some of the alternatives the division considered for annual permit and license fees included having these fees increase as the authorized diversion increased, discounting the annual fees that would be charged to licensees to encourage permit holders to complete their projects, and charging different fee rates for direct diversion than for water storage. The division also considered basing annual permit and license fees on actual water usage, evaluated whether to take combined limitations on diversion related to multiple permits or licenses into consideration in assessing fees, and assessed the pros and cons of a minimum fee. With respect to one-time fees, the division considered assessing fees on new applications that would reflect the average cost of processing. For example, in its analyses, the division estimated that the cost to process a new application averaged nearly \$11,000 as of December 2003. It recognized, however, that a fee this high could be financially prohibitive for most water rights applicants. The division also considered charging different application fee rates for direct diversion than for storage, as well as a fee-for-service approach that charged applicants for billable hours. The division presented its ideas to stakeholders to obtain feedback.

The division bases the annual fees it charges for permits, licenses, and certain pending applications on “face value,” which is the total amount of water that a water right holder can divert in any year under a permit or license.

The division established a minimum annual fee of \$100 for each active permit, license, and for certain pending applications.

Ultimately, the division implemented a two-tiered fee structure that includes one-time fees and annual fees. In implementing the fee structure, the division decided that most of its funding should come from annual fees, and it decided to establish a minimum fee of \$100 for each active permit, license, and for certain pending applications. The minimum fee for fiscal years 2004–05 and 2005–06 covers the first 10 acre-feet of authorized yearly diversion, and the division assesses a per-unit charge for each additional acre-foot. Additionally, the division decided to bill each water right separately, which means that fee payers with multiple water rights receive multiple bills each year—one for each permit, license, or certain pending applications they hold.

With regard to assessing annual fees to federal agencies, the Water Code requires that fees established by the water board apply to the federal government to the extent authorized under federal law. According to the division, the U.S. Bureau of Reclamation (Reclamation) declined to pay water rights fees. The Water Code allows the water board to allocate the fees to persons or entities that have contracts for the delivery of water if it determines that Reclamation is likely to decline payment of the fees by claiming sovereign immunity. Generally speaking, the water board passes Reclamation’s fees to water supply contractors in proportion to the contractor’s water entitlement expressed as a percentage of that project’s total contracted project water. The division stated that it assesses annual fees directly to Reclamation for any permits or licenses not having identified water supply contractors.

According to the division, it also implemented annual fees for its water quality certification program. These fees are paid by power generators who are seeking or have received a 401 certification for a hydroelectric project requiring a license from the Federal Energy Regulatory Commission. They are calculated separately from other fees, using an estimated budget for time charged by division staff to the program. The estimated budget is divided by that year’s nonpayment factor, and the result is distributed among all of these entities regulated by the division based on (1) water quality certification status and (2) total kilowatt capacity of the hydroelectric facility.

The division has modified its original fees by preparing emergency regulations each year. Further, it considered proposals raised in a stakeholders work group in June 2004. For example, one proposal would have required a fundamental change to the method the division used to assess annual fees, from a per-unit system,

based on individual water rights, to an entity-based system. This proposal would have required the division to send each individual or entity a single bill for all of its licenses, permits, and pending applications. The water board concluded that it could not convert its existing billing structure to an entity-based billing scheme in time for fiscal year 2004–05 billings. Consequently, it recommended that annual fees for fiscal year 2004–05 continue to be based on individual water rights. The water board stated that its Office of Information Technology estimated that conversion of the WRIMS structure would require 12 months. Additionally, citing a lack of time and resources to make significant modifications to its WRIMS, the division calculated the fees using existing information that was in the database.

We focused the majority of our work on annual fees related to permits, licenses, and pending applications because these fees provide most of the division’s funding.

THE DIVISION USES ERRONEOUS DATA TO DETERMINE SOME OF ITS ANNUAL FEES FOR PERMITS AND LICENSES

The division relies on WRIMS to calculate the annual fees it charges for permits and licenses. However, we found that the WRIMS 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. The division acknowledged that our information suggests some data deficiencies in its system pertaining to annual amounts specified on permits and licenses, but it stated that redirecting staff to conduct fee reviews would reduce staff time dedicated to other division programs, and so this may be a lower priority for the division.

For the last two fiscal years, 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.

The Division Assessed Incorrect Annual Fees for Several Water Rights Holders

The division charges most of its annual fees based on the total annual amount of acre-feet of diversion authorized in a permit or license. Unless there is an annual limitation on the number of acre-feet that can be diverted, a permit or license does not expressly identify the total annual authorized diversion in acre-feet. In these instances, the division calculates the fees based on the rate of authorized direct diversion and the authorized storage amount. To determine the annual authorized direct diversion amount, the rate of direct diversion is converted to acre-feet per day, and this rate is then multiplied by the number of days in the authorized season of diversion. The text box shows this calculation for a single season of diversion with only one rate of diversion. It is also possible for a permit or license to contain different rates of diversion and each may have different seasons of diversion.

Calculation of the Annual Amount of Authorized Diversion for Fiscal Year 2005–06

$$[A \times B] + C$$

where:

- A = Daily authorized diversion in acre-feet. If a direct diversion rate (rate) is expressed in cubic feet per second (cfs), the division multiplies the rate by 1.9835 to convert cfs to acre-feet per day.
- B = Number of days in the authorized season of diversion.
- C = Total annual amount of storage authorized.

Source: California Code of Regulations, Title 23, Section 1066(b)(1).

Therefore, to calculate the annual fees accurately, the information that the division uses from the WRIMS database must match the terms of the permits or licenses.

The division charged incorrect fees for 18 of the 80 water rights we tested for fiscal years 2004–05 and 2005–06 because the WRIMS data used to calculate the fees did not match the terms specified in the permits and licenses. Specifically, over this period, the division undercharged fee payers for 10 water rights by a total of \$125,000 because the WRIMS fields the division used to calculate the fees did not fully account for all of the authorized diversion. For example, the division undercharged one water right by more than \$57,000 during the two-year period because it did not factor in the 3.5 million acre-feet of water that the permit authorized for storage. Conversely, the division overcharged eight water rights by a total of \$1,300 because WRIMS overstated the authorized diversion specified in the permits and licenses. In the largest example, when issuing a license in June 2005, the division limited the annual amount of authorized diversion to 162,446 acre-feet. However, the division failed to enter this limitation into WRIMS when it issued the license. WRIMS continued to calculate the annual fee based on the outdated amount of 289,591 acre-feet, causing the fee to be \$1,144 too high in fiscal year 2005–06. Furthermore, the division did not bill two water rights a total of \$406 because WRIMS did not list them as active in the system.

When we brought this matter to the division's attention, it acknowledged that the information suggests some data entry deficiencies in its WRIMS database pertaining to annual amounts specified on permits and licenses, and it stated that staff had evaluated some of the information we provided and will correct any errors. Further, addressing our concern that WRIMS does not use multiple diversion rates and may not include the correct number of days of diversion in how it calculates the fees, the division stated that it may direct staff to review permits and licenses containing multiple diversion seasons or rates and override the fee calculation by entering the maximum allowable diversion amount into WRIMS. However, the division stated that the redirection of staff to conduct fee reviews would reduce staff time dedicated to other division activities, such as processing applications, and given that each fee payer has an opportunity to petition for a reconsideration of its fees, this redirection may be a lower priority. Specifically, the division stated that "if a fee is erroneously assessed, a fee payer has an opportunity to petition the [water board] for reconsideration of that fee. On receiving a timely and properly filed petition, the [water board] may deny the petition if the [water board] finds that the assessment was appropriate and proper, set aside or modify the assessment, or take other appropriate action." Although we agree that having a process to reconsider fees is necessary, we are troubled that the division relies primarily on fee payers to remedy the errors by submitting these petitions. 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.

We are troubled that the division relies primarily on fee payers to notify it of errors because the largest problems we found related to undercharges, and fee payers who are undercharged do not have a monetary incentive to report that their bills are too low.

We followed up on six petitions for reconsideration for which the water board agreed it had erred in calculating the fees for fiscal year 2003–04. In response to the petitions for reconsideration, the division recalculated the fees and notified the Board of Equalization (Equalization) to cancel the fee assessment, issue a revised assessment, or issue a refund. However, we found that the division incorrectly entered the annual amount of authorized diversion into WRIMS for two of the six fee payers. As a result, the division continued to bill these fee payers incorrectly for the following two fiscal years. However, instead of overcharging the fee payers, the division now is undercharging them.

Contributing to the problem, the invoice Equalization sends on the division's behalf does not contain sufficient detail for fee payers to recalculate the annual fee. The invoice identifies the fee payer's application number and specifies the amount

the fee payer is required to pay. However, 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. However, we believe that providing the total annual acre-feet of authorized diversion and the rate the division charges per acre-foot to fee payers on the invoices would assist them in verifying the accuracy of their annual fees. 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. The division also could consider making the information available on its Web site.

Not Using the Correct Amount of Authorized Diversion May Cause the Division to Incorrectly Calculate Its Annual Fee Rates

The Water Code, Section 1525(d)(3), requires the water board to set the amount of total revenue collected each year through the fees it charges at an amount equal to the revenue levels set forth in the annual budget act. It also requires the division to review and revise the fees each fiscal year as necessary. The division's annual fees for permits, licenses, and certain pending applications consist of a \$100 minimum fee (known as the base fee) plus a small amount per acre-foot for diversions exceeding 10 acre-feet (known as the fee rate). For example, in fiscal year 2005–06, the fee rate was \$0.03, up from \$0.025 in the previous fiscal year. The division stated that it uses WRIMS to project the annual revenue it must receive from permits and licenses. The division stated it runs simulations in which it varies the fee rate, the base fee, and the number of acre-feet covered by the base fee, using WRIMS database information, until it achieves the target revenue amount it needs from annual permit and license fees. The division said it uses such key system information as the number of active permits and licenses, the related amount of annual diversion authorized, and adjustments or discounts for hydroelectric projects. However, as we discussed earlier, one key variable used in these revenue simulations is unreliable because the WRIMS data used to calculate fees does not always contain the accurate amount of annual diversion authorized by the permits and licenses. Due to these errors, the division may be setting its annual fee rate for permits, licenses, and pending applications higher or lower than if it had used accurate data.

One of the key variables that the division uses in its revenue simulations is unreliable because the WRIMS data used to calculate fees does not always contain the accurate amount of annual diversion authorized by the permits and licenses.

In testing a sample of 80 permits and licenses, we found that the WRIMS data the division used to calculate annual fees did not include a net of 7.3 million acre-feet of total annual authorized diversion in fiscal year 2005–06. For example, as we described earlier, the WRIMS data used to calculate the annual fee did not reflect 3.5 million acre-feet of storage for one fee payer. For other fee payers, the WRIMS data used to calculate the fees did not include multiple diversion rates or incorrectly identified the number of days that their permits and licenses authorized the fee payers to divert water. For example, one license authorized year-round diversion of water. However, in calculating the maximum annual diversion amount, WRIMS recognized a period of only 168 days instead of 365 days, resulting in the fee payer not being billed for approximately 94 acre-feet per year. In another example, because the WRIMS data table that the division uses to calculate the fees does not allow for multiple diversion rates, the division did not bill a fee payer for nearly 1.9 million acre-feet per year. Although we cannot conclude from our testing that the net effect of the total errors in WRIMS is an underreporting of the annual diversion that is allowed by permits and licenses, it is clear that the system contains errors that must be corrected.

The Division Must Address Data Concerns Before It Converts to a New System

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.

Historically, the water board has experienced difficulties when migrating to new systems. For example, in the feasibility study report (FSR) for the new system, the water board acknowledged that the WRIMS data have become compromised because they are based on inaccurate data from the previous mainframe system that it converted in 1994. Furthermore, the water board

Ensuring that its current system has accurate and complete data would greatly enhance the division’s ability to accurately bill fee payers before converting to a new system.

noted in the FSR that its experience in migrating existing data to another water quality information management system showed that it had underestimated the effort required to extract, cleanse, and load data into the new system.

Replacing its current system would not ensure that the division corrects all the problems with its data. Even though upgrading or replacing an information system may include converting historical data, this process typically is limited to such procedures as removing outdated data and ensuring that the data do not contain errors that violate the rules designed into the new system. For example, the data conversion process typically would address duplicates and would ensure that required fields contain data and that associations between records use properly formatted data. However, it may not ensure that the types of errors we discovered in our testing are corrected. For example, we found that the data table the division uses to calculate its annual fees does not contain maximum annual storage or maximum annual use information for certain water rights, even when this information is specified on the permit or license.³ Because only certain water rights specify these amounts, even a new system would not require entries in these fields. Consequently, when the division implements its new system, these types of errors would, if not corrected, continue to cause the inaccurate calculation of fees.

THE DIVISION'S METHOD FOR CALCULATING ANNUAL FEES MAY DISPROPORTIONATELY AFFECT CERTAIN HOLDERS OF MULTIPLE WATER RIGHTS

Many fee payers who hold multiple water rights, each of which authorizes them to divert a small quantity of water, typically pay significantly more each year than those who hold a single water right authorizing them to divert the same, or in some cases even a greater, amount of water.

When the division implemented its fee structure in fiscal year 2003–04, the division chief (chief) stated that its approach to assessing annual permit and license fees “distributes the cost of regulation in proportion to the diversion of water. The larger diverters, who have the greater impact on the environment, will pay higher fees.” However, the division does not completely achieve this goal, because many fee payers who hold multiple water rights, each of which authorizes them to divert a small quantity of water, typically pay significantly more each year than those who hold a single water right authorizing them to divert the same, or in some cases even a greater, amount of water. Although the division’s approach is one option that is consistent with the Water Code and a regulatory fee structure, it could revise its methodology to charge its minimum fee by fee payer rather than

³ For example, in our fiscal year 2005–06 testing of the fees the division charged to permits and licenses, we found that WRIMS did not include the annual diversion limitations that were explicitly stated in the permits and licenses for 10 of the 80 we tested.

by water right. 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 change would better distribute the division's fees in proportion to the authorized diversion of water. As we stated previously, 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.

Although we agree that charging a minimum fee is reasonable, applying the minimum fee to each water right causes some fee payers to pay significantly more than others who are authorized to divert the same or even a greater amount of water. Using actual information from fiscal year 2005-06 billings to illustrate, Table 2 shows three comparisons highlighting the disparities that have occurred using the division's current fee methodology.

TABLE 2

The Division's Current Methodology Causes Fee Disparities

	Number of Water Rights	Total Annual Authorized Diversion (in Acre-feet)	Actual Fee Fiscal Year 2005-06	Alternative Fee Approach Fiscal Year 2005-06*	Difference
Comparison I					
Fee Payer A	1	306	\$ 108.88	\$ 109.65	\$ 0.77
Fee Payer B	3	306	308.28	109.65	(198.63)
Comparison II					
Fee Payer C	1	2,810	184.01	191.28	7.27
Fee Payer D	3	9	300.00	100.00	(200.00)
Comparison III					
Fee Payer E	10	7	1,000.00	100.00	(900.00)
Fee Payer F	9	728	919.77	123.41	(796.36)
Fee Payer G	1	36,000	1,179.70	1,273.27	93.57

Sources: Fiscal year 2005-06 billing data and testing of individual water rights and invoices.

* The rate per acre-foot under the alternative approach increased from \$0.03 per acre-foot to \$0.0326. This is to offset the reduction in revenue from minimum fees.

Comparison I shows that the division charged one fee payer \$108.88 based on a total authorized diversion of 306 acre-feet for a single water right, yet it charged another fee payer \$308.28 based on a total authorized diversion of 306 acre-feet from three water rights. Thus, the division charged the latter fee payer nearly three times more than the first fee payer for the same authorized diversion. The division charged some fee payers higher fees even though they were authorized to divert less water than other fee payers. This is shown in Comparison II, in which the division assessed one fee payer \$184.01 for a single water right authorizing a total annual diversion of 2,810 acre-feet, yet it assessed another fee payer \$300 for three water rights authorizing a total annual diversion of 9 acre-feet. Comparison III shows that the division billed three fee payers relatively similar amounts, although each is authorized to divert significantly different amounts of water.

Assessing a minimum fee to each fee payer rather than to each water right would more closely distribute the fees in proportion to the authorized diversion of water.

The alternative approach that we suggest would assess a minimum fee to each fee payer rather than to each water right. This approach would increase the fee rate to \$0.0326 per acre-foot—up from the division’s rate of \$0.03 in fiscal year 2005–06—to offset the reduced revenue from minimum fees and would more closely distribute the fees in proportion to the authorized diversion of water. Table 3 on the following page illustrates that under this approach the majority of fee payers, including those with permits, licenses, and pending applications, would see either no change in their current fees or a reduction in their fees. Specifically, 1,734 fee payers, who typically are authorized to divert relatively small amounts of water with multiple permits and licenses, would receive reductions in their annual fees. Of this group, 1,520 fee payers would receive a reduction in their annual fees of 40 percent to 99 percent. Conversely, 661 fee payers, representing the largest water diverters, would receive fee increases ranging from 1 percent to 8.7 percent, with the largest dollar increase being \$66,474. These large diverters are generally power authorities, special districts, and other local governments that divert thousands of acre-feet per year.

TABLE 3

Effect of Fee Payer-Based Billing

Effect on Fee Payer Bills	Number of Fee Payers*	Percent of Fee Payers	Authorized Diversion (in Acre-feet)	Percent of Total Acre-feet	Fees Billed in Fiscal Year 2005–06	Proposed Fees Under Fee Payer-Based Billing Model†	Difference
Reduction of 40 percent to 99 percent	1,520	19.56%	841,602	0.26%	\$ 616,579.13	\$ 178,159.37	\$(438,419.76)
Reduction of 1 percent to 39 percent	214	2.75	6,433,354	2.01	225,709.82	197,999.72	(27,710.10)
No change	2,991	38.49	29,191	0.01	299,104.75	299,104.75	0
Increase less than 1 percent	2,385	30.69	321,542	0.10	247,512.77	247,970.34	457.57
Increase of 1 percent to 9 percent	661	8.51	313,141,727	97.62	5,840,077.41	6,306,555.92	466,478.51
Totals	7,771	100.00%	320,767,416	100.00%	\$7,228,983.88	\$7,229,790.10	\$ 806.22

Sources: Fiscal year 2005–06 billing data and auditor analysis.

* The total number of fee payers including the U.S. Bureau of Reclamation’s water supply contractors is 8,042.

† The rate per acre-foot under the alternative approach increased from \$0.03 per acre-foot to \$0.0326. This is to offset the reduction in revenue from minimum fees.

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. The division rejected a similar approach for fiscal year 2004–05 that was suggested by a stakeholder because, according to the water board’s Office of Information Technology, converting WRIMS would take 12 months. However, the water board’s Office of Information Technology could use different data analysis software to extract and sort the necessary data without the need to convert WRIMS. For example, we sorted the extracted data based on the fee payer identification rather than on the water right application identification and totaled each fee payer’s authorized diversion to calculate the alternate amount. Thus, we organized the population by fee payer, with each fee payer’s water rights and pending applications grouped together. For fiscal year 2005–06, the division billed fee payers based on 13,251 permits, licenses, pending applications, and Reclamation contractors. Under the alternative method, the division would have billed fee payers based on 8,042 unique fee payers, meaning it would have issued 5,209 fewer invoices.

Consequently, this alternative approach not only distributes the fees more in proportion to the authorized diversion of water, but it could also potentially increase the efficiency of the billing process for both the division and its fee payers because the number of bills generated would decrease significantly.

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 division charges 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.

The provisions of the California Code of Regulations, Title 23, Section 1066(b)(3), state 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. As we discussed earlier, 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.

In our testing, we examined the permits and licenses held by five fee payers with combined limitations on their water rights. Table 4 demonstrates how these combined limitations affect each fee payer’s total annual authorized diversion and the monetary impact of the division’s current method for calculating the annual fees. For example, fee payer 1 has two water rights that, if added individually, total 464 acre-feet of authorized diversion; however, one of the water rights contains a term that limits the total authorized diversion for both licenses to a total of 341 acre-feet. Currently, the division charges this fee payer for 464 acre-feet, although the fee payer is limited to 341 acre-feet of water in any year. If the fee payer instead held a single water right limiting the diversion to 341 acre-feet, the division would charge a fee based only on that amount. In another example shown in the table, the division’s calculation for fee payer 3 amounted to \$468,315, based on 27.7 million acre-feet of diversion authorized by four water rights. Using the same fee schedule as the division but factoring in the combined limitation of 23.8 million acre-feet of authorized diversion for these four water rights, we calculated that the fee payer would have paid \$351,915, a reduction of \$116,400.

TABLE 4

**Fee Payers With Combined Limitations on Their Water Rights Pay Based on More Water Than They Are Authorized to Divert
Fiscal Year 2005–06**

	Number of Water Rights	Authorized Per Individual Water Right		Authorized Per Combined Limitation		Difference	
		Acre-feet	Fee Amount*	Acre-feet	Fee Amount	Acre-feet	Fee Amount
Fee Payer 1	2	464	\$ 213	341	\$ 210	123	\$ 3
Fee Payer 2	2	906	227	300	209	606	18
Fee Payer 3	4	27,744,060	468,315	23,864,060	351,915	3,880,000	116,400
Fee Payer 4	4	5,124,561	73,492	4,836,662	64,855	287,899	8,637
Fee Payer 5	11	7,132,653	105,053	5,689,694	84,006	1,442,959	21,047

Sources: Auditor testing of active permits and licenses and the division’s fiscal year 2005–06 fee schedule.

* The fee amounts reflect the terms of permits and licenses. Due to data errors in the division’s database, in some cases the fees listed in the table do not match what the division actually billed for permits and licenses in fiscal year 2005–06.

When we asked the division about its implementation of the regulation, the chief said the division considers the combined limitations when calculating its annual fees, but if a water rights holder retains the flexibility to divert the full amount authorized under a particular permit or license, then the annual fee should be based on that full amount. Hypothetically, if a fee payer chooses not to divert water under a water right that contains a combined limitation, the fee payer still could divert the full amount of water authorized by the remaining rights that do not include the combined limitation term. Under certain circumstances, this could result in more authorized diversion than the amount of the combined limitation. However, in our sample, if the five water rights holders with combined limitations chose not to divert water under their water rights containing the combined limitation, they would be authorized to divert less water in total under the remaining water rights. This is because the combined limitation was still greater than the sum of the face value for their remaining water rights. Further, even if the authorized diversion was greater for the remaining water rights than the combined limitation, and the fee payer selectively diverted water only under the remaining water rights, the authorized diversion still would be less than the sum of the face value of all the water rights in total, on which the division currently bases its annual fees. Consequently, under any circumstance, the division is charging fee payers with combined limitations based on more water than they are authorized to divert. We believe the division should charge its fees based on the greater of the combined limitation or the amount the fee payer can selectively divert under water rights without a combined limitation.

The chief stated that it would be exceedingly difficult to calculate annual fees based on combined limitations, primarily because WRIMS does not contain any information relative to other rights affected by a combined limitation. The chief stated that, among other things, the division would need to manually review all existing permits and licenses and populate new fields in WRIMS for all rights subject to a combined limitation. Furthermore, the division stated that, if desired, a fee payer could ask the water board to reduce the annual amount authorized by a permit or license, which would reduce the amount subject to annual fees. We agree that revising its method of calculating fees based on combined limitations might take the division some time to review files and populate new information in WRIMS. We found that 1,571 fee payers could potentially be affected by combined limitations. This is based on the number

We found that 1,571 fee payers could potentially be affected by combined limitations.

of fee payers who held multiple water rights authorizing more than 10 acre-feet of diversion in fiscal year 2005–06. Despite the increase in time the division may need to make this change, we believe it is important that the division charge fee payers consistently. Furthermore, we recognize that the annual fee reductions for fee payers related to combined limitations taken in isolation likely would increase the division’s cost per acre-foot in its fee schedule. However, we were not able to determine the extent of this change because the information is not currently maintained in WRIMS.

Moreover, we believe that this issue strengthens the argument for billing by fee payer rather than by water right. When the division prepares the billing information each year, having the information organized by fee payer would make it easier to identify fee payers with multiple permits and licenses. One difficulty that the division identified in calculating fees based on combined diversion limitations was that it would need to establish a protocol assigning an annual amount specific to each permit and license, due to the different sources of water, purposes of use, and points of diversion. Specifically, the division stated that it would need to make sure that the sum of the annual amounts and the subsequent fees for the permits and licenses did not exceed the amounts calculated for each individual right or for the combined limitations. However, this complexity would be reduced if the division changed its fee regulations to bill by fee payer rather than by water right. With this approach, once the division reviewed its permits and licenses, it could bill fee payers based on the face value of all their water rights, including any combined limitations.

RECOMMENDATIONS

To ensure that its WRIMS contains all the necessary information needed to calculate annual fees accurately for the next billing cycle, the division should 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. This should be completed before the division’s conversion to any new database system, so that the data are accurate and complete.

To more precisely distribute the fees in proportion to the annual fee payers' authorized diversion, the division should 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.
- 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.

To ensure that fee payers have sufficient information to review the accuracy of their bills, the division should 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. ■

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CHAPTER 2

The Division of Water Rights Lacks Effective Management Techniques to Ensure That It Processes Water Rights Promptly

CHAPTER SUMMARY

The Division of Water Rights (division) of the State Water Resources Control Board (water board) lacks effective management techniques to ensure that it processes water rights promptly. For the sample of 15 recently issued permits and licenses we reviewed, it took the division, on average, 3.3 years to issue the permits and 38.2 years to issue the licenses after permitting.

In addition, the number of permits and licenses the division issued during the previous five fiscal years has decreased significantly. According to the division's Water Rights Information Management System (WRIMS) as of September 2005, the division had 617 pending applications, consisting primarily of applications for permits, in process or waiting to be processed. Several external factors contribute to the amount of time it takes to process a water right application, such as requests for extensions from the applicant, protests from other affected entities, environmental review requirements, and involvement from other state agencies that have responsibilities in this area. 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 applications for new water rights (applications) and petitions to change existing water rights (petitions) and is sometimes slow to review and issue correspondence addressed to applicants. Furthermore, the division does not effectively track water rights files, causing staff to spend time searching for files when they could be engaged in more productive activities.

THE NUMBER OF PERMITS AND LICENSES THE DIVISION ISSUES HAS DECREASED SIGNIFICANTLY

We reviewed a sample of 10 recently issued permits and five recently issued licenses and found that, on average, it took the division roughly 3.3 years to issue the permits and 38.2 years

For our sample of recently issued permits and licenses, on average, it took the division roughly 3.3 years to issue the permits and 38.2 years to issue the licenses after permitting.

to issue the licenses after permitting.⁴ The division also has a relatively large number of pending applications compared with the number it actually processes each year. According to WRIMS as of September 2005, the division had 617 pending applications, of which 93 percent consisted of applications for permits and the remainder was for other types of water rights. Further, in the division's August 2005 licensing workload summary, it reported having 778 permits awaiting licensing. Of these, there were 308 for which it had conducted a precicensing inspection but had not yet issued a license and 470 that it had not yet inspected as of July 2005. If our sample is indicative of its rate of processing, it could take the division many years to effectively reduce this pending workload.

The division's issuance of permits and licenses has decreased significantly over the past five fiscal years. Based on WRIMS data as of September 2005, the division issued 139 permits and licenses in fiscal year 2000–01 and only 13 permits and licenses in fiscal year 2004–05. As a result, the average length of time the division takes to issue permits and licenses could increase because it will take longer to reduce the number of pending applications. Notably, this comes at a time when the division's budget is proposed to be increased in fiscal year 2006–07 to the highest level in the last five fiscal years. This is partly because the division is requesting more than \$3 million in fiscal year 2006–07 for a new electronic management information system to replace WRIMS and additional staff to assist with processing water rights.

Several factors appear to contribute to the length of time it takes to process a water right. As we explain in more detail in the Introduction, this processing is complex and can be legitimately time-consuming. Specifically, a permit authorizing diversion of water can be issued only after completion of the application, payment of all filing fees, noticing, protest resolution, and environmental review. A number of external factors contribute to the amount of time required to process a permit or license. For example, the applicant can cause delays during permitting by submitting incomplete information that requires follow-up by division staff or by not paying the required fees promptly. In addition, protests filed by other affected entities can cause delays because the concerns must be resolved before the division issues a permit. The California Water Code (Water Code) requires the applicant and the protester to make a good faith effort to resolve the protest within 180 days from the date on which the

⁴ We selected the 10 most recently issued permits and five most recently issued licenses as of November 2005.

protest period expires. If the water board finds there is a good reason to do so, it may allow additional time for the applicant and the protester to attempt to resolve the protest. If the protest cannot otherwise be resolved, the applicant and the protester must present the case at a field investigation conducted by the division or during a hearing conducted by the water board.

Eight of the 15 permits and licenses we examined were in environmental review for more than one year.

Further, environmental review can have a significant impact on the length of time it takes to issue a permit. For example, eight of the 15 permits and licenses we examined were in environmental review for more than one year. In addition, the Water Code requires the water board to notify the Department of Fish and Game (Fish and Game) of any application for a permit to appropriate water. Fish and Game then is required to recommend to the water board the amounts of water, if any, required for the preservation and enhancement of fish and wildlife resources. This requirement could potentially add to the length of time required to process applications.

Processing licenses after a permit is issued can take years. Specifically, for our sample of five recently issued licenses, it took from zero to 34.4 years to complete the projects' development schedules—which included full use of the water—and four of these five requested one or more time extensions ranging from one to 10 years for each extension to complete these projects. The length of time following the projects' development schedules to issue the licenses ranged from 10.5 to 29.2 years.

In response to our questions, the division chief (chief) stated that the division's processing of water rights permits and licenses has been directly affected by a significant reduction in staff and the concurrent implementation of the fee program. The chief said that the change from General Fund to fee-based funding resulted in a significant reassignment of staff from processing water rights to the development and implementation of the fee program. In addition, the chief stated that the division's permitting activities also include acting on petitions, applications for small domestic and livestock pond registrations, and renewal of these registrations. Permitting staff also process cancellations of applications and revocations of permits and licenses. The chief indicated that she and other members of the division's management staff have spent much of their time on litigation-related activities; preparing for testimony at hearings related to the water rights program, such as legislative hearings and budget hearings; and briefing water board members on actions related to water board hearings. Further, the chief

The chief stated that the division's processing of water rights permits and licenses has been directly affected by a significant reduction in staff and the concurrent implementation of the fee program.

stated that because of the high priority associated with these activities, the division's managers cannot always review staff work as quickly as is desirable, which further affects the timely processing of water rights applications.

According to the governor's budget, the division's staff levels decreased from 92.8 positions in fiscal year 2002–03 to 74.7 positions in fiscal year 2004–05, a reduction of nearly 20 percent. Most of this reduction occurred in fiscal year 2003–04, when the division implemented the fee-based system. An executive order directing a hiring freeze that took effect in October 2001 prohibited state agencies and departments from filling vacant positions that would constitute a new hire to state government. This hiring freeze prohibited new hires regardless of the fund paying for the position. The governor ended the hiring freeze on June 30, 2004. Thus, the division would not have been able to fill vacancies for most of this period.

The division's backlog has come under scrutiny from the Legislative Analyst's Office (legislative analyst) and has been the subject of recent legislation. In its *Analysis of the 2003–04 Budget Bill*, the legislative analyst stated that "existing funding levels allow the [water board] to process around 150 applications annually. However, the [water board] currently has a backlog of over 680 pending applications. Even with no new applications for permits, it would take over four years to process all of the backlogged applications at the current rate. The [water board] also issued approximately 125 licenses annually on projects that have satisfied all of the conditions of their permits. Currently over 1,000 permittees are waiting to be inspected and licensed. In addition, staff inspect about 120 water rights annually at current funding levels. This reflects annual monitoring of less than 1 percent of the water rights under the [water board's] enforcement jurisdiction." Furthermore, in September 2004, the governor signed Assembly Bill 2121, which added sections 1259.2 and 1259.4 to the Water Code. The Legislature declared in this statute that "pending before the [water] board are more than 276 applications to appropriate water from streams in the counties of Marin, Napa, Sonoma, Mendocino, and Humboldt. Many of these applications have been pending for a decade. Most of these applications have been pending for at least five years. These delays are inappropriate, and they produce regulatory uncertainty for the water user community and the conservation and fishing communities." The statute requires the water board to prepare an annual written summary of pending

applications to appropriate water in those counties. In response to this mandate, the division posted its *Status of Pending Applications to Appropriate Water in the Counties of Marin, Napa, Sonoma, Mendocino, and Humboldt* on its Web site in December 2005.

WEAKNESSES IN APPLICATION TRACKING MAY CONTRIBUTE TO SLOW PROCESSING

Potentially contributing to the division's slow rate of processing is that it 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. Our review of these two 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 applications. 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 these applications.

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.

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.⁵ 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. 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.

⁵ The total number of pending applications in the application tracking system as of December 2005 is 615; however, the number of pending applications in WRIMS is 617 as of September 2005. Two applications were listed in WRIMS as pending but were not in the application tracking system.

Moreover, a tracking system that lacks reliable dates cannot be used to determine application status or to monitor application processing times.

Seventy-four 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.

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. Not having these data limits the division's ability to track these applications effectively using this system.

In response to our concerns, the division stated that it believes its tracking system is antiquated and needs updating. However, it indicated that it is not critical for it to track applications by staff member name because it uses the system to track applications primarily by number, then by section, and lastly by staff assigned. According to the chief of the permitting section (permitting section chief), the lack of accurate assigned supervisors occurred because the division could not always edit the reports to reflect the current staff assignment. Subsequently, the division stated that this problem was due to password protection, and it indicated that it is currently working with the water board's Office of Information Technology on modifications to include the relevant staff assigned. Furthermore, the water board stated in its June 2005 feasibility study report concerning a replacement for WRIMS that the division did not track staff assignments "in any current system, making it difficult or impossible to give management valid information about assignments or their status, or to perform proper allocation of resources to tasks." Without accurate and complete tracking of information, the division cannot ensure that it effectively manages its pending workload and processes workload as quickly as it could.

The division stated that it is pursuing the resources to upgrade these tracking systems as part of its replacement of WRIMS. It stated its purpose is to have one tracking database for all the division activities on a specific water right. The division also stated that it would verify all staff assignments before entering data into the new database. However, similar to the concerns we raise in Chapter 1, the division needs to ensure that all data in the current systems, including relevant date fields, are complete

and accurate before it upgrades to a new system. Otherwise, the data in the new system will remain unreliable and ineffective for tracking pending workload.

THE DIVISION DOES NOT TRACK PETITIONS EFFECTIVELY

Of the 530 active petitions in the division's petition tracking system, 44 petitions did not show what action has been taken, 65 did not include the date that the last action occurred, and 219 did not show which staff members were assigned.

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.

In our discussions with the division, the chief acknowledged that the petition tracking system has data deficiencies and stated that the current supervisor has been filling in the missing data as she becomes aware of them and as time permits. Additionally, the permitting section chief acknowledged that staff do not always update the system promptly after they process a petition, and that the system may not include all the active petitions held by the division, noting that on a couple of occasions the division found petitions that had not been entered in the system or tracked in the division's pending workload. The division cannot reliably use the petition tracking system to manage its petition workload because the system may not contain all the petitions the division has received and is missing key information on the petitions that it does contain. For example, 36 of the 530 active petitions in the system show no information in any of three critical fields, including which staff have been assigned, what action has been taken to process the petition, and when the last action occurred. As a result, the petition tracking system cannot be used to ensure that workload is distributed in a manner that facilitates efficient and timely processing or to determine petition status.

Furthermore, it is likely that the division's petition tracking system lists some petitions as active when in fact they have been resolved. As of December 2005, the system indicated that

The division's petition tracking system cannot be used to ensure that workload is distributed in a manner that facilitates efficient and timely processing or to determine petition status.

the division had 38 active petitions that had been filed before 1990, including one that was filed in 1979. Further, the system indicated that 27 percent of the division's active petitions were filed before 2000 and 59 percent were filed before 2003. The permitting section chief acknowledged that staff may not have updated the system to reflect when some of these petitions were resolved, providing a further indication that the system is not useful as a management tool. With regard to updating the system to reflect the current status of petitions, the chief stated that doing this for petitions that have been resolved "would be a waste of time other than to note the resolution." However, we believe that noting the resolution is necessary to allow the division to use the system as a management tool. The division cannot effectively use the petition tracking system to manage its workload if the system does not accurately show the number of active petitions.

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. Table 5 identifies the total number of days it took the division to complete various phases of these applications. We determined there were three instances in our sample in which an applicant asked to divert water from a fully appropriated stream. The water board maintains a list of fully appropriated streams in which it has found that water is not available at times during the year and issued a decision to that effect or a statutory or court-referenced adjudication has determined that water is not available. After the adoption of a declaration that a stream system is fully appropriated, the water board cannot accept for filing any application for a permit to appropriate water from that stream system during the season the water board has declared it fully appropriated. In certain cases, however, the water board can exempt an application from the fully appropriated stream restriction. This exemption process is an extra step, so it would add to the processing time for these applications. However, we found that in some cases, the division took longer to process an application than seemed reasonable and the cause could not always be explained fully.

TABLE 5

Length of Time to Complete Various Phases of Permit and License Issuance

Sample Number	Number of Protests	Acceptance Date	Days to Complete Each Task				Totals Number of Days to Issue License
			Receipt Phase [*]	Acceptance Phase [†]	Public Noticing Phase [‡]	Total Number of Days to Issue Permit [§]	
Permit							
1	0	March 2001	11	84	108	976	Not Applicable
2	0	August 1999	32	96	142	1,611	Not Applicable
3	1	October 2000	48	60	221	1,215	Not Applicable
4	5	January 1996	2	622	856	3,008	Not Applicable
5	1	June 2000	17	36	290	1,445	Not Applicable
6	2	April 2003	2	110	101	511	Not Applicable
7	0	March 2002	10	97	134	1,050	Not Applicable
8	2	March 2003	5	352	155	747	Not Applicable
9	0	December 2003	2	33	381	686	Not Applicable
10	5	June 2000	3	106	269	1,851	Not Applicable
License							
11	1	March 1971	4	2	21	194	12,329
12	0	July 1981	7	29	303	623	8,127
13	0	June 1949	#	#	133	778	19,766
14	1	July 1950	#	#	387	1,333	18,787
15	6	April 1971	#	#	58	1,899	10,661
Average number of days to process permit or license						1,195	13,934
Average number of years to process permit or license						3.3	38.2

Source: Division of Water Rights' application files.

* Days between the date the application is signed by applicant and the date the division recorded it as received.

† Days between the date the division recorded receipt and the date the division accepted the application.

‡ Days between the date the division accepted the application and the date the division sent public noticing instructions to the applicant.

§ Days between the date the division accepted the application and the date the division issued the permit.

|| Days between the date the division issued the permit and the date the division issued the license.

We were unable to determine the number of days in this phase because these applications were submitted on a form that did not include a date on the signature line of the form.

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. 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. For the longest of these, it appears that the division and the applicant each contributed to some of the delay, although other causes during this phase remain largely unexplained (this example is listed in Table 5 as permit 4). For example, based on the correspondence in the division's application file, the applicant submitted two separate water rights applications in April 1994 for the same water project. The applicant set forth in this letter the reasons why it believed the water board should accept these applications. In June 1994, about 40 days later, the applicant submitted additional information and indicated that more information would be provided in the near future. However, it appears that the next correspondence did not occur until October 1994—about 130 days later—when the applicant wrote a letter to the division urging the water board to accept the applications because the applicant was concerned, in part, that the water board might consider the water sought by the applicant to be subject to the fully appropriated stream restriction previously set by the water board. In an internal division memorandum in December 1995, 428 days later, the division acknowledged the applicant's October 1994 letter and approved an exemption from the fully appropriated stream restriction. It then formally accepted the applications in January 1996, taking a total of 622 days. We could not find evidence of contact between the division and the applicant between October 1994 and December 1995.

We asked the division to explain why this application took so long to accept, and the permitting section chief stated that the project was large and complicated and that the division had several meetings and numerous exchanges of correspondence with the applicant and its agents during the acceptance phase. The permitting section chief also stated that, although the application was accepted, the applicant did not provide sufficient information for the division to consider the application to be complete.

We are perplexed that it took the division 1,050 days to issue a permit for an application that was exempt from environmental review and did not have a material delay associated with protests.

In addition, we are perplexed that it took the division 1,050 days to issue a permit for another application that was exempt from environmental review and did not have a material delay associated with protests, which are phases that can add to the processing time required (this example is listed in Table 5 as permit 7). For example, the division took 97 days to accept the application, even though the evidence in the file suggests that minimal work was needed to resolve the deficiencies the division

identified in the application. In November 2001, the applicant, who was a water right holder, submitted an application to increase his amount of diversion by 6 acre-feet.

We asked the division why it took so long to accept this application. The permitting section chief responded that acceptance was delayed because the applicant was not cooperating and suggested that the applicant was responsible for the delay because he did not promptly submit the appropriate fees, such as a \$100 application filing fee for the division and an \$850 stream flow protection standards filing fee for Fish and Game. Further, the permitting section chief stated that the application had a few minor omissions that the division contacted the applicant to correct. However, it appears that the division is partly responsible for the length of time it took to accept the application because it took 38 days from the date it received the application to make the first contact with Fish and Game concerning the related fee, wherein the division asked Fish and Game to send the division an exemption letter for the \$850 fee. Further, it is not clear why it took the division 39 days from the date it received the application to contact the applicant, wherein the division requested the applicant to submit the required filing fee. After this contact, the applicant submitted the \$100 fee within seven days and Fish and Game waived the remainder of the fees about two weeks later. Therefore, although it appears that the applicant was partly responsible for some of the delay because he did not pay the fees timely, the evidence in the file does not suggest that he was not cooperating, as the division has contended.

There were other, longer delays for this application in another processing phase—the public noticing phase—which lasted 134 days, as shown previously in Table 5. Moreover, although it appears that the division found out in May 2003 that the original applicant had transferred ownership to another individual, causing some of the delay, we did not see evidence in the file explaining why it took 860 days—more than two years—to issue the permit after the protest period ended for the application.

We found that the number of days between the date the division accepted the applications in our sample and the date the division sent the applicants mailing instructions for conducting public noticing ranged from 21 days to 856 days. Similar to the acceptance phase of the application process, some of the delays in the public noticing phase appear to have been caused by both the applicant and the division, yet many of the delays during this

phase remain largely unexplained. Generally, the Water Code does not specify the length of time in days within which the division must complete these steps. 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.

Contributing to some of these 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 took 64 days to review—plus an additional 41 days to issue—a letter approving a petition to change the point of diversion for an existing license. When we asked the division why it took so long, the permitting section chief stated that it issued this letter and two other documents for this applicant on the same day. However, this did not sufficiently explain the cause for the mailing delays after the chief approved the documents. In yet 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 also tested a sample of five applications that the division is in the process of permitting. Although we found some similarities in the length of time it took to process the applications through the various phases, we found there was some improvement in the length of time for the receipt and acceptance phases. Specifically, it took the division between three days and 15 days to record the receipt of these applications. It also accepted two of the five pending applications within one working day; it accepted the others between 154 days and 711 days. However, as we found in the sample of permits and licenses, it took the division a long time to send public noticing instructions for two pending applications requiring 254 days and 260 days. The remaining three applications were accepted—one as far back as November 2003—but had not yet been noticed.

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 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. In addition, the bar-code system does not have necessary controls over data entry because the system allows for the entry of invalid numbers. Effective document management is critical to the division's ability to process, issue, and enforce water rights.

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 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. Each file had a bar-code label but was not in the system. We located one of the remaining two files 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 found that the bar-code system does not have the necessary controls over data input, resulting in invalid entries in the system.

We also found an example of an employee who had scanned a file erroneously so the status indicated that it was checked out to a file number instead of the individual. These errors reduce the effectiveness of the system because it increases the risk that the location of a file cannot be readily identified.

In May 2003, the division recognized that it had a problem with missing files, and it issued a policy memorandum to all division staff reiterating its established protocols for scanning files. The policy memorandum stated that “files are the critical tools without which [the division] cannot do [its] job. Missing files constitute not only a tremendous waste of time and energy and endless source of frustration to staff searching for files not located where they belong, but in certain instances can bring an entire proceeding to a screeching halt.” As a result, the policy requires staff to scan all files in their offices on the first working day of each month and to scan a file when they pass it to someone else. The division reiterated this concern in the June 2005 feasibility study report for its proposed new information management system, stating that staff often does not scan files correctly and as a result spends much of its time searching to determine who has the file.

In response to our concerns, the division stated that it had made recent improvements to its records management procedures. Specifically, the division stated that its records unit had put bar-code labels on all the statements of water diversion and use and groundwater recordation files, which it believes will reduce the time required to locate these files. Further, the division stated that it anticipates implementing a mobile bar-code scanning unit that will allow it to identify files more rapidly, and stated that it has requested the water board’s Office of Information Technology to review the existing bar-code system to determine if controls can be incorporated into the system for better data control. In addition to these improvements, we believe the division needs to put bar-code labels on its files and scan each file so the system recognizes its location. The division also would benefit from conducting a complete physical inventory to ensure that it accounts for all its files.

RECOMMENDATIONS

To ensure that it is able to process water rights promptly and maintain accurate and effective water rights records, the division should:

- 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.
- Develop procedures for improving the timeliness of management review and issuance of documents.
- Continue to work with the water board's Office of Information Technology to improve the controls over data entry in its bar-code system.
- Conduct a complete physical inventory of its files and ensure that each file has a bar-code label and is scanned into the system.

To ensure that its tracking systems for pending applications and petitions are complete and accurate, the division should review its pending workload and update 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.

We conducted this review under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,



ELAINE M. HOWLE
State Auditor

Date: March 23, 2006

Staff: Nancy C. Woodward, CPA, Audit Principal
Bryan B. Beyer
Michelle Baur, CISA
David Edwards
Justin McDaid
Leonard Van Ryn, CIA, CISA
Benjamin Ward

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Agency Comments provided as text only

California Environmental Protection Agency
1001 I Street
Sacramento, California 95814

MEMORANDUM

TO: Elaine M. Howle
State Auditor
BUREAU OF STATE AUDITS
555 Capitol Mall, Suite 300
Sacramento, CA 95814

FROM: Donald Owen (*Signed by Donald Owen*)
Acting Undersecretary
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

DATE: March 8, 2006

SUBJECT: BUREAU OF STATE AUDITS DRAFT REPORT NUMBER 2005-113

We appreciate the opportunity to comment on your draft report entitled "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." The California Environmental Protection Agency (Cal/EPA) and the State Water Resources Control Board (State Water Board) have reviewed the draft report, and the State Water Board's comments are attached. I concur with the State Water Board's comments.

Cal/EPA notes that the Governor's Budget proposes an augmentation of \$3.6 million to develop a new Water Rights Information Management System and to improve the Water Rights Program permitting process. This investment will help the State Water Board's Division of Water Rights to administer the state's water right program more effectively and efficiently.

Cal/EPA recognizes that improving the effectiveness of the water right program is an ongoing process, and we appreciate your recommendations.

Attachment

Agency Comments provided as text only

State Water Resources Control Board
1001 I Street
Sacramento, California 95814

MEMORANDUM

TO: Elaine M. Howle*
State Auditor
BUREAU OF STATE AUDITS
555 Capitol Mall, Suite 300
Sacramento, CA 95814

FROM: Celeste Cantú (*Signed by Celeste Cantú*)
Executive Director
EXECUTIVE OFFICE

DATE: MARCH 06, 2006

SUBJECT: BUREAU OF STATE AUDITS DRAFT REPORT NUMBER 2005-113

Thank you for the opportunity to review and comment on the Bureau of State Audits (Bureau) draft report on the State Water Resources Control Board (State Water Board) Division of Water Rights (Division). The State Water Board appreciates the work of your staff in recommending ways to improve administration of our water right program.

- Consistent with the Bureau's recommendations, the State Water Board is already seeking funds to upgrade its computer system and to improve the Division's current management information and tracking systems. Ensuring that the new computer system contains improved and relevant information, both with respect to water right data and tracking data, will enhance the Division's operations. To the extent the Bureau staff has identified errors, the Division is currently in the process of correcting those errors.

We also will bring the Bureau's recommendations for fee program improvements to the water right stakeholders as part of the State Water Board's next revision of the fee regulations. We will work with those stakeholders toward agreement on the Bureau's recommended changes.

Thank you again for the opportunity to comment on your draft report.

* California State Auditor's comments appear on page 57.

COMMENTS

California State Auditor's Comments on the Response From the State Water Resources Control Board

To provide clarity and perspective, we are commenting on the response from the State Water Resources Control Board (water board). The numbers below correspond to the numbers we have placed in the margin of the water board's response.

- Although we note on page 28 that the water board is seeking to replace the Division of Water Rights' (division) current Water Rights Information Management System (WRIMS), we did not recommend that the water board seek funds to upgrade its computer system. Our recommendations focus on steps the division can take to improve the completeness and accuracy of the data in its current system. These steps should be completed before the division's conversion to any new database system. Moreover, as we state on page 29, merely replacing its current system will not ensure that the types of errors we discovered in our testing will be corrected.
- Although we are pleased the water board is in the process of correcting the errors we identified, this is just a first step. To ensure that all fee payers are billed correctly, the division needs to review all the water rights files for those that pay annual fees and update its 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.

cc: Members of the Legislature
Office of the Lieutenant Governor
Milton Marks Commission on California State
Government Organization and Economy
Department of Finance
Attorney General
State Controller
State Treasurer
Legislative Analyst
Senate Office of Research
California Research Bureau
Capitol Press