



State and Regional Water Boards: Issues for Legislative Consideration

Presented To

Assembly Budget Subcommittee No. 3 on Resources
Assembly Environmental Safety and Toxic Materials Committee
Senate Budget and Fiscal Review Subcommittee No. 2
Senate Environmental Quality Committee



State Water Resources Control Board 2000-01 Budget Proposal

The budget proposes \$543 million for support of the State Water Resources Control Board (SWRCB), including the regional boards, in 2000-01. Funding is from the following sources:

- General Fund: \$73 million (13 percent)
- Special funds: \$274 million^a (51 percent)
(mainly regulatory fees)
- Federal funds: \$125 million (23 percent)
- Bonds \$71 million (13 percent)

^a Includes \$241 million from assessments on underground storage tank owners to reimburse tank owners for their costs to clean up leaking tanks.

Proposed 2000-01 expenditures are \$25 million (5 percent) above 1999-00 estimated expenditures. The budget proposal includes:

- An increase of \$6.8 million for ambient water quality monitoring.
- \$7.1 million to continue a one-time increase in the current year to reduce backlogs in permit updates and increase inspections.
- An increase of \$3 million to develop and implement plans to address water pollution in the most seriously impaired water bodies in the state.
- A one-time increase over the current year of about \$20 million to pay underground storage tank cleanup claims.



Summary of Issues for Legislative Consideration

- Permit updates.**
 - Addressing backlogs in updating and renewing waste discharge permits.
- Inspections.**
 - Addressing shortfalls in inspection frequency.
- Enforcement.**
 - Ensuring adequacy of enforcement responses and statewide consistency.
- Ambient water quality monitoring.**
 - Restoring an activity substantially underfunded in recent years.
- Performance measures.**
 - Ensuring expenditures are resulting in water quality improvements.
- Long-term funding issues.**
 - Need for stable, flexible funding.
 - Revision of fee structure based on comprehensive needs analysis.
 - Addressing nonpoint source pollution.



Issue 1: Permit Backlogs

- Permit Updates/Reissuance.** Federal law requires federal NPDES permits to be reissued every five years. State administrative standards provide for the update of state waste discharge requirements (WDRs) every 5, 10, or 15 years, based on the relative threat to water quality of the permittee's activities.

- Ineffective Enforcement With Outdated Permits.** Permits are updated and reissued in order to conform to changing state and federal laws, pollution control technology, and water quality conditions. Outdated permits result in ineffective enforcement.

- Current-Year Augmentation.**
 - Backlogs in updating and reissuing permits have been an ongoing problem in recent years. As of July 1, 1999, there were 886 "backlogged" permits that had passed their scheduled date for update/reissuance.
 - For 1999-00, the Legislature augmented the board's budget by \$3 million from the General Fund to reduce the backlog by about one-third. This was in addition to \$750,000 provided to reduce permit backlogs in the landfill regulatory program.

- Budget Proposal.** For 2000-01, the budget proposes \$3.3 million from the General Fund to continue to reduce the permit backlogs. Even with this funding, the board projects that 337 permits will still have to be updated or reissued at the end of 2000-01. The board estimates that it would require at least an additional \$4.7 million to eliminate this backlog.



Issue 2: Inspections

- Inspection Frequency.** Under federal requirements, NPDES permittees must be inspected either once every five years or annually, depending on the relative threat to water quality. State administrative goals provide for one to three annual inspections, depending on the facility type and category of waste discharger.
- Failure to Meet State Administrative Goals.** In recent years, the regional boards have fallen far short of the state board's inspection goals. For example, in 1997-98, less than 20 percent of the inspection goal for some categories of permits was met.
- Current-Year Augmentation.** For 1999-00, the Legislature augmented the board's budget by \$3.5 million from the General Fund to increase inspections.
- Budget Proposal.** The budget proposes \$3.8 million from the General Fund to continue the increased level of inspections. According to the board, an additional \$3.7 million would be required to fully meet its inspection goals.



Issue 3: Enforcement



Problems Identified in 1999 LAO Review. In our *Analysis of the 1999-00 Budget Bill* (please see page B-103), we identified problems with the board’s enforcement activities, including:

- Inconsistencies in enforcement among regional boards.
- Inadequate follow-up to known violations.
- Poor tracking of violations and enforcement responses.
- Insufficient use of “formal” enforcement tools, such as penalties.
- Lack of tracking of enforcement expenditures.



Legislative Action. In 1999, the Legislature passed legislation or approved supplemental report language to require the board to make a number of program improvements, including:

- Establishing an enforcement action review panel as a means to ensure consistency among the regional boards.
- Standardizing regional board enforcement reporting and making this reporting more comprehensive.
- Assessing mandatory minimum penalties for serious and chronic water quality violations. (Chapter 92, Statutes of 1999 [AB 1104, Migden] and Chapter 93, Statutes of 1999 [SB 709, Committee on Budget and Fiscal Review].)
- Tracking enforcement expenditures, and reporting to the Legislature on these expenditures.



Board Action. In addition to the above, the board is making substantial improvements to its data management systems to enhance the tracking of violators and enforcement responses.



Issue 3: Enforcement

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Budget Proposal.

- As part of the Cal-EPA Enforcement Initiative, the budget proposes an increase of \$1.1 million for water quality and water rights enforcement actions.
- In light of a significant number of positions recently added to the board's core regulatory program that remain unfilled, we recommend that the board report at budget hearings on its plans, and its ability, to hire all of the additional enforcement staff requested for the budget year.



Issue 4: Ambient Water Quality Monitoring

- Foundation of Board's Work.** Ambient water quality monitoring involves monitoring the quality of a water body as a whole, as opposed to monitoring waste discharges into water bodies at a particular location. Such monitoring is the foundation for much of the board's work—including basin planning, standard-setting, and permitting.

- Substantial Reduction in Funding in 1990s.** Ambient water quality monitoring was funded at a \$12 million level in the 1980s. Funding was reduced throughout the 1990s to a \$1.8 million level by 1998-99, almost none of which was to monitor groundwater.

- Legislative Action.** For 1999-00, the Legislature provided a total of \$5.8 million for ambient water quality monitoring. This amount was subsequently reduced by the Governor to \$2.8 million. The Legislature also directed the board in the *Supplemental Report of the 1999 Budget Act* to develop a plan for implementing a *comprehensive* program for monitoring both ambient surface water quality and groundwater quality. This report was due on January 10, and was received by the Legislature on February 18.

- Budget Proposal.** The budget proposes an increase of \$6.8 million for ambient water quality monitoring (\$4.5 million for surface water monitoring and \$2.3 million for groundwater monitoring). This increase will not result in statewide monitoring; rather, the budget proposes to focus on monitoring in "priority areas."



Issue 5: Performance Measures



Statutory Requirements for Performance Measures.

- State law requires the state board to develop "measurable performance objectives" as part of a requirement to institute "quality government programs." Since one of the main objectives of this requirement is to increase levels of environmental protection, the board's measures should include targets that can be used to measure how well the state is improving water quality.
- If effectively developed, performance measures can be used as a management tool that can assist with goal-setting and planning and budgetary decisions.
- The board's "core regulatory program" encompasses permitting, inspections, and enforcement activities related to waste dischargers regulated under board-issued permits. (Nonpoint source pollution control is outside of the core regulatory program.) Our 1999 review found that the performance measures adopted by the board for its core regulatory program are mainly of a workload nature (for example, number of self-monitoring reports reviewed) and do not directly address whether there have been water quality improvements.



Legislative Directive. Pursuant to the *Supplemental Report of the 1999 Budget Act*, the board is developing more meaningful performance measures for its core regulatory program. Preliminary and final reports are due to the Legislature by April 1, 2000 and January 1, 2001, respectively.



Issue 5: Performance Measures

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- Nonpoint Source Pollution Control.*** Measures are also lacking particularly with respect to nonpoint source pollution control. The board, in conjunction with the Coastal Commission, is currently developing performance goals for the "priority" management measures found in the state's implementation plan for nonpoint source pollution control.



Issue 6: Long-Term Funding Issues

- Complex and Inflexible Funding Structure.** Over 70 different fund sources (including numerous special funds, federal assistance agreements, and reimbursements) support the state and regional boards. Because of a greater reliance on special and federal funds rather than the General Fund since the 1980s, decision-making has become compartmentalized within the numerous fund sources rather than based on overall priorities.
- Statutory Fee Cap.** Annual permit fees levied on waste dischargers have been statutorily capped at \$10,000 since the late 1980s, based on a needs analysis that is now seriously outdated. Currently, fees cover only about 40 percent of the core regulatory program (permitting, inspections, enforcement) expenditures, running counter to the “polluter pays principle.”
- Comprehensive Needs Analysis.** Pursuant to the *Supplemental Report of the 1999 Budget Act*, the state board is developing a comprehensive needs analysis of its core regulatory program. Preliminary and final reports are due by April 1, 2000 and January 1, 2001, respectively. These reports should provide a basis for the Legislature to reexamine funding and fee levels for this program.
- Funding for Nonpoint Source Pollution Control.** Historically, almost all of the board’s budget has been focused on addressing “point source” pollution, although “nonpoint source” pollution is a major source of degradation of the state’s waters. Only about 3 percent (\$15.4 million) of the board’s proposed 2000-01 budget is for nonpoint source pollution control. The water bond on the March 2000 ballot would provide \$100 million to be allocated by the board for this purpose.