

STATE OF CALIFORNIA
Budget Change Proposal - Cover Sheet
 DF-46 (REV 07/23)

Fiscal Year 2024-25	Business Unit Number 3940	Department State Water Resources Control Board
Hyperion Budget Request Name 3940-024-BCP-2024-GB		Relevant Program or Subprogram 3560-Water Quality

Budget Request Title

Resource Needs to Address Impacts on Project Permitting Resulting from Recent Supreme Court Decisions

Budget Request Summary

The State Water Resources Control Board requests \$6.1 million from the Waste Discharge Permit Fund (WDPF) in 2024-25 then \$7 million annually thereafter, and 38.0 permanent positions phased in over two years, 26.0 positions in 2024-25 and an additional 12.0 positions beginning in 2025-26. This request includes \$1.1 million in one-time contract funds for Information Technology (IT) services, \$200,000 in one-time contract funds and \$35,000 in ongoing contract funds for staff training. The requested resources would be used to conduct essential water quality permitting and enforcement work that has historically been conducted by the United States Army Corps of Engineers (Corps) and the United States Environmental Protection Agency (US EPA) but will no longer be, due to a 2023 U.S. Supreme Court Decision that reduces federal jurisdiction over a number of waterbodies.

Requires Legislation (submit required legislation with the BCP) <input type="checkbox"/> Trailer Bill Language <input type="checkbox"/> Budget Bill Language <input checked="" type="checkbox"/> N/A	Code Section(s) to be Added/Amended/Repealed	
Does this BCP contain information technology (IT) components? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <i>If yes, departmental Chief Information Officer must sign.</i>	Department CIO Kathy Owen	Date 01/10/24

For IT requests, specify the project number, the most recent project approval document (FSR, SPR, S1BA, S2AA, S3SD, S4PRA), the approval date, and the total project cost.

Project No.3940-110 **Project Approval Document:** SB1A (State 1 Business Analysis)
Approval Date: 7/26/2023 **Total Project Cost:**

If proposal affects another department, does other department concur with proposal? Yes No
Attach comments of affected department, signed and dated by the department director or designee.

Prepared By Renée Milano	Date 01/10/2024	Reviewed By Ryan M. Wilson	Date 01/10/2024
Department Director Eric Oppenheimer	Date 01/10/2024	Agency Secretary Yana Garcia	Date 01/10/2024

Department of Finance Use Only

Additional Review: Capital Outlay ITCU FSCU OSAE Dept. of Technology

Principal Program Budget Analyst Andrew Hull	Date submitted to the Legislature 1/10/2024
--	---

A. Problem Statement

On May 25, 2023, the U.S. Supreme Court issued its ruling in *Sackett v. EPA* (Sackett Ruling), holding that the Clean Water Act extends to only those “wetlands with a continuous surface connection to bodies that are ‘waters of the United States’ in their own right,” so that they are “indistinguishable” from those waters. According to the majority opinion, the Clean Water Act covers only adjoining wetlands, a reading that excludes wetlands separated from jurisdictional waters by man-made dikes or barriers, natural river berms, beach dunes, and the like that had previously been protected.

The Sackett Ruling will have significant and widespread consequences for the Clean Water Act and the scope of federal protections over the nation's waters. The jurisdiction of federal agencies is limited to those waters that qualify as waters of the United States. Thus, the Sackett Ruling, in reducing the number of waters that qualify as waters of the United States, also significantly limits the reach of the federal agencies, leaving many state waters unprotected at the federal level and reliant on state authorities.

Many of California's existing programs are structured and implemented based on how the scope of the Clean Water Act has been implemented for the last 50 years. With the substantive reinterpretation of the Clean Water Act set forth in the Sackett Ruling, the State Water Resources Control Board (State Water Board) and the nine Regional Water Quality Control Boards (Regional Water Boards) will need to restructure their programs to reflect the new bounds on federal jurisdiction. The State Water Board and Regional Water Boards (collectively the Water Boards) administer and enforce various Clean Water Act programs in California, including the Clean Water Act Section 401 Water Quality Certification Program (401 Certification Program), Section 402 National Pollutant Discharge Elimination System (NPDES) Permitting Program, and Section 303 Water Quality Standards Program. The Water Boards also administer and enforce water quality protection requirements for “waters of the state” under the Porter-Cologne Water Quality Control Act (Porter-Cologne), including the issuance of state permits or Waste Discharge Requirements (WDRs) for all discharges of waste that can affect the quality of waters of the state. The Water Boards expect that going forward there will be a greater reliance on state regulation of discharges set forth in WDRs and a need to restructure existing enforcement programs to rely on authorities applicable to non-federal water of the state found in Porter-Cologne. This will require a heavier state workload and attendant need for increased staff resources and training.

In 2019, the Water Boards adopted the State Policy for Water Quality Control: State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State (Dredge or Fill Procedures). The Dredge or Fill Procedures were developed to leverage the existing federal program to minimize regulatory duplication and improve process consistency and efficiency. Specifically, the Dredge or Fill Procedures identify several decision points and work products where the Water Boards will defer to the United States Army Corps of Engineers (Corps). There are two that are key to this BCP: (1) use of the Corps' technical manuals that describe how to determine the presence and extent of federal waters; (2) reliance on the Corps to verify applicant-provided aquatic resource delineation reports, including conducting field inspections necessary to complete verifications.

Whether state or federal permit tools are used depends on whether the water body receiving a waste discharge is considered a water of the United States, or a non-federal water of the state. The identification and jurisdictional status of a water body is determined through a process known as delineation and the resulting work product is called an aquatic resource delineation report. Historically, the Corps reviewed and verified delineations as part of its Clean Water Act Section 404 permitting process. The 2019 Dredge or Fill Procedures recognized this by requiring deferral to the Corps delineation decisions. However, the Sackett Ruling greatly contracts federal jurisdiction, and as a result, the Water Boards will assume the responsibility of reviewing and approving delineations for additional waters, especially waters

within the Central Valley, which include large numbers of isolated vernal pool wetlands and in Southern California, which has a prevalence of ephemeral or disconnected waters.

Prior to the Sackett Ruling, most permits for stormwater discharges or dredge or fill activities were written using principally federal authorities. State permits (WDRs) were used only infrequently in limited and specific instances where federal jurisdiction did not apply. For example, over the last five years, WDRs have been used in lieu of Clean Water Act Section 401 Water Quality Certifications (401 Certifications) less than 5 percent of the time. Under the Sackett Ruling, the Water Boards anticipate that WDRs will be needed at least 25 percent of the time.

The administrative process for adopting WDRs under Porter-Cologne and its implementing regulations is slower and more resource-intensive than the process for NPDES permits and 401 Certifications. Three key differences are relevant to this BCP. (1) WDRs require issuance of a draft permit for public review and require preparation and release of written responses to public comments. (2) Under the existing California Water Code and California Code of Regulations, approval of 401 Certifications may be delegated to the Executive Officer of the Regional Board. No such delegation is allowed for issuing WDRs. Instead, WDRs may only be approved by the full board following a public hearing. As a result, WDRs require significant additional work to agenda the item for a board meeting. (3) NPDES permits have a specific exemption from the California Environmental Quality Act (CEQA), whereas WDRs must comply with CEQA. Frequently, this means that a full Environmental Impact Report must be prepared prior to adoption of a WDR, and because these WDRs are typically general permits written to address a class of discharges, rather than the discharges from a specific proposed project, there is no project specific CEQA from another agency that the Water Boards can rely on. Instead, the Water Boards must assume the role of lead agency, bearing the full workload of CEQA preparation. Staff estimate the WDR process requires approximately 140 hours per application more than the 401 Certification process.

The Water Boards and the US EPA enforce various Clean Water Act programs in California, including the Clean Water Act Section 401 Certification Program, and Section 402 NPDES Permitting Program. In addition, the Water Boards also enforce water quality protection requirements for waters of the state under Porter-Cologne, including enforcement of state permits or WDRs for all discharges of waste that can affect the quality of waters of the state. The Water Boards expect that going forward there will be a greater reliance on state regulation of discharges set forth in WDRs and a need to restructure existing enforcement programs to rely on this authority.

The Water Boards' enforcement tools under Porter-Cologne for non-federal waters of the state do not provide the same proactive protections or deterrents as the Clean Water Act and effective enforcement will be more resource intensive. In addition, the shrinking of the number of wetlands and water bodies considered waters of the United States will leave a gap in the jurisdiction of the US EPA that will need to be filled by the Water Boards using state law authorities found in Porter-Cologne. Clean Water Act-based enforcement will also need to adjust how cases are developed and the evidence that is gathered to demonstrate jurisdiction under the new test for waters of the United States as redefined by the Sackett Ruling.

The Water Boards consistently work under challenging time frames that are determined and enforced by other agencies. Specifically, the Clean Water Act provides the authority for the Corps to establish a "Reasonable Period of Time" for completion of 401 Certifications, after which the Corps may waive state authority under the Clean Water Act. The Corps regulations and guidance generally establish a default 60-day deadline for completion of water quality certification. The Water Boards track application processing timelines in their performance reports

https://www.waterboards.ca.gov/about_us/performance_report_2122/regulate/262_wqcertification.html).

The performance reports show that in Fiscal Year 2021/22 the median time required to process a 401 Certification was 107 days.

In June 2013, the California State Auditor (Auditor) issued Audit Report 2012-120 which included a number of recommendations to improve performance of the 401 Certification Program. These recommendations focused on developing consistent practices among the Water Boards in implementing the 401 Certification Program. The Auditor recommended improvement of several administrative practices by the Water Boards. In particular, the Auditor noted the Water Boards were inconsistent in meeting the regulatory timelines for application and 401 Certification approval. Not only were deadlines exceeded by the Water Boards, but applicants were not informed of their application status. The Water Boards were also inconsistent in reviewing the accuracy of the application fees received. The Auditor cited a loss of \$18,000 for six of nine applications reviewed. The State Water Board committed to addressing these audit recommendations and made significant improvements by June 2014.

A key element for addressing the issues brought up by the Auditor and ensuring timely compliance with federal timelines is the development of an online tracking system. The Water Boards have been developing an online application submittal and permit tracking system.

Resource History for 401 Certification, NPDES Stormwater, and Enforcement Programs
(Dollars in thousands)

Program Budget	PY - 4	PY - 3	PY - 2	PY-1	PY	CY
Authorized Expenditures	\$40,765	\$41,880	\$40,302	\$48,988	\$51,800	\$53,211
Actual Expenditures	\$38,362	\$39,143	\$36,224	\$44,947	\$47,271	\$48,412
Revenues	--	--	--	--	--	--
Authorized Positions	305.0	314.0	218.0	254.0	255.0	257.0
Filled Positions	290.0	292.0	194.0	228.0	231.0	229.0
Vacancies	15.0	22.0	24.0	26.0	24.0	28.0

Workload History for 401 Certification, NPDES Stormwater, and Enforcement Programs

Workload Measure¹	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24²
Application for Individual Certifications	857	950	492	589	639	830
Enrollments under the Nationwide Permit General Certification	85	91	67	90	147	115
Applications for Individual Dredge or Fill Waste Discharge Requirements	15	23	38	33	17	15
Construction Stormwater NPDES Enrollments	9,580	10,265	11,287	12,522	13,329	10,575
Construction Stormwater Waste Discharge Requirements Enrollments	0	0	0	0	0	0
Industrial Stormwater NPDES Enrollments	13,106	14,342	16,333	17,913	18,696	14,625
Industrial Stormwater Waste Discharge Requirements Enrollments	0	0	0	0	0	0
Inspections Conducted	4,112	4,546	3,887	4,506	3,710	4,100
Enforcement Actions Taken	3,433	2,907	4,052	5,519	2,861	3,700

¹The Water Boards saw a dramatic drop in the number of 401 certification applications in 2020-21 and 2021-22. The cause of this drop off is undetermined but is assumed to be associated with Covid. Applications began approaching historic levels in 2022-23 and the Water Boards anticipate a return to pre-2019 levels as early as 2023-24.

²Workload history has been determined based on a forecast of expected workload based on historic trends and information from the first two months of the fiscal year.

B. Justification

The recent reinterpretation through the Sackett Ruling of what qualifies as waters of the United States significantly narrows the scope of federal jurisdiction, and the Water Boards will need to restructure their programs to replace lost federal services and provide state protection where federal protections no longer apply. In many cases the state processes are less efficient and more resource intensive than the lost federal protections. This BCP would provide staff and contract resources that would help the Water Boards independently manage the workload that was historically shared with the Corps. As described in more detail below, the solution will help the Water Boards carry out their duty to protect water quality while making the transition to being the sole regulator of discharges of pollutants to these waterbodies.

The Auditor and the Water Boards' performance reporting have both demonstrated challenges faced by the Water Boards in keeping up with workload under the existing permitting framework. Given that a significant fraction of waters is now shifting from joint federal and state jurisdiction to state-only jurisdiction, the Water Boards' partners will no longer conduct any work to permit discharges of pollutants to those waters. The Water Boards need to assume this workload and must augment resources to do so, or the boards will become a bottleneck to approval of critical projects, including housing and infrastructure projects, which usually require these permits in order to build and make up approximately 50 percent of all dredge or fill applications received per year.

The Sackett Ruling impacts the Water Boards' resources in a number of fundamental ways:

1. It increases the number of waters that will rely solely on state authorities requiring additional resources to replace services currently provided by the Corps.
2. It requires additional policy development work to establish state definitions and procedures to respond to anticipated changes in federal regulations that are logical outgrowths of the Sackett Ruling.
3. It increases workload by requiring dredge or fill projects be permitted using the less efficient WDR processes instead of issuing 401 Certifications.
4. It requires creation and ongoing maintenance of WDRs for activities that were previously permitted through existing Clean Water Act Section 401 Nationwide Permits or NPDES stormwater permits.
5. It requires expansion of inspection and enforcement activities to replace US EPA actions on waters that are no longer under federal jurisdiction and further increases workload by replacing Clean Water Act enforcement authorities with less efficient and more resource intensive state authorities.
6. It requires changes to IT infrastructure to accommodate the changing federal authorities and support Water Board response activities.

Addressing these changes will require additional resources. Based on current workload and expected changes described in more detail below, the Water Boards anticipate a need for 38 additional positions, and contract dollars for both training and IT development. These are explained in more detail below.

1. Replacing US Army Corps of Engineer Services

The Water Boards are requesting 3.0 Positions, \$200,000 in one-time contract funds, and \$35,000 in ongoing contract funds to replace services historically provided by the Corps. The Sackett Ruling causes a significant and immediate contraction of the federal government's jurisdiction. This is significant because, as discussed in the background section, the Water Boards rely on products and services provided by the Corps that will need to be replaced with state resources. The most significant of these are verifications of aquatic resource delineation reports, which include desktop review, site visits, and report preparation. While the Water Boards will need to replace these services throughout the state, three regions are of critical concern as these regions have large portions of their region that will fall out of federal jurisdiction and are strategically located to provide assistance to other Regional Boards as necessary. This BCP proposes to augment by one position in the Central Valley Region, Los Angeles Region, and the San Diego Region (3.0 positions

total). Allocation of the additional resources to these regions align with where the greatest workload is and provides good geographic distribution so that these resources may be lent to other regional boards where necessary.

Because the Water Boards have historically relied on the Corps to provide this service, training will also be needed to develop Water Board technical capabilities. This BCP includes one-time and ongoing training on conducting aquatic resource verifications. One-time cost for training is estimated at \$200K and ongoing costs are estimated at \$35K per year. This would provide additional resources in the most critically affected regions.

2. Policy Development – Stream Delineation Procedures

The Water Boards request 2.0 positions to develop stream delineation procedures. The contraction of federal jurisdiction will necessitate that the Corps revise and reissue guidance on how to determine jurisdiction of federal waters. Because of the broad federal jurisdiction prior to the Sackett Ruling, the Water Boards were able to use and incorporate the Corps manuals into its regulatory process (e.g., incorporation of the Corps' manuals into the Dredge or Fill Procedures), and rely on the Corps to verify jurisdiction for the vast majority of projects. This will not be possible once the federal rules and guidelines are modified to comply with the Sackett Ruling. The Water Boards will need to develop independent guidance for determining state jurisdiction. This work was completed for wetland areas as part of the Dredge or Fill Procedures, but similar work still needs to be completed for streams and riparian areas that will also be affected by the Sackett Ruling.

Based on staff experience with the Dredge or Fill Procedures, this would require a minimum of 2.0 positions and two years for the State Water Board to develop and adopt stream and riparian zone delineation procedures as a Policy for Water Quality Control.

3. Increased Workload from Issuing Waste Discharge Requirements where 401 Certifications were previously issued

The Water Boards request 13.0 positions to address increased workload from decreased process efficiency. As noted in the background section, regulating stormwater and dredge or fill activities through WDRs instead of NPDES or 401 Certifications is a slower and more resource intensive process. Over the last five years, WDRs have been used in lieu of 401 Certifications less than 5 percent of the time. Under the Sackett Ruling, the Water Boards anticipate that WDRs will be needed at least 25 percent of the time. Thus, the increase in the number of permits (also referred to as orders) that must be adopted as WDRs creates additional workload to meet California Water Code and Code of Regulations requirements.

Based on historical program data, the Water Boards receive an average of 1260 applications for certifications per year. The Water Boards estimate that at least 25 percent of projects (or 315) will be located in waters that will have lost federal jurisdiction and will therefore require a state permit (WDR) rather than a 401 Certification. Of those 315, about half of those projects may qualify for coverage under other existing state general WDRs that are available. The other half (about 150 projects) would require individual WDRs. This is a new and non-discretionary workload.

The additional workload would amount to between 100 and 140 hours per individual permit or 9 positions statewide (9.0 of the requested 13.0 positions). This workload includes additional noticing requirements, preparation of draft permits for public review, preparation of written responses to comments, and administrative tasks necessary to present the permit to the Regional Board at a board hearing prior to adoption.

Some of the impacts of the Sackett Ruling can be mitigated through the development of new general permits, enrollment in which can be done administratively. While this work is discretionary, the position estimates for this task assume that this permit development work will be done. Should these additional permits not be developed, more projects would need to be permitted through the WDR pathway, which would require more resources than developing, maintaining, and implementing a general order.

Development of the necessary general permits would be conducted in a two-phased approach. In phase 1, the State Water Board's Division of Water Quality (DWQ) would need 1.0 of the 13.0 positions to develop, maintain and implement general waste discharge requirements for state-only waters equivalent to the existing 401 Certification Nationwide Permits (Nationwide Permits) General Certification. Two of the 13.0 positions would be needed to develop, maintain and implement new general WDRs to cover projects that currently are permitted under the most commonly used Nationwide Permits but which are not exempt from CEQA and currently are permitted via the longer individual 401 Certification process. Finally, 1 of the 13.0 positions would be needed for an attorney to provide legal analysis to minimize litigation risk, review the increased number of individual WDRs and accompanying public notice documents, and advise during the development of new general WDRs.

4. Permit Development – Waste Discharge Requirements Equivalent to Industrial and Construction Stormwater NPDES Permits

The Water Board requests 5.0 positions to develop, maintain, and implement WDRs equivalent to the Industrial and Construction Stormwater Permits. The Water Board is authorized by US EPA to administer NPDES permits, including permits that address stormwater discharges from construction and industrial activities. Historically, federal jurisdiction was broad enough that these NPDES permits regulated most stormwater discharges throughout the state. With the contraction of federal jurisdiction from the Sackett Ruling, there will likely be an increase in the number of discharges that fall outside the scope of these two stormwater NPDES permits. To ensure the same level of protection from stormwater discharges as pre-Sackett Ruling, the Water Board will need to issue waste discharge requirements under state authorities for stormwater discharges to non-federal waters of the state.

The State Water Board will need to issue and maintain these WDRs in addition to the NPDES permits because the Water Boards cannot waive the requirement that discharges to waters of the United States are authorized by an NPDES permit. To maintain the same level of protection for stormwater discharges to federal and non-federal waters, the State Water Board will need to complete a CEQA environmental document and assess whether and how to incorporate requirements rooted in federal regulations, including performance and monitoring standards, into WDRs. Assuming the scope and requirements are similar to the existing construction and industrial general permits, an estimated 5 positions would be needed to develop, adopt, and implement WDRs for waters of the state.

5. Replacement of Federal Enforcement Activities

The Water Board requests 15.0 positions to replace federal enforcement activities. The Water Boards and the US EPA enforce various Clean Water Act programs in California, including the Clean Water Act Section 401 Water Quality Certification Program and Section 402 NPDES Program. The Sackett Ruling limits both agencies' Clean Water Act jurisdiction by adopting a narrow interpretation of what qualifies as waters of the United States. The Water Boards will need to expand state programs to continue protecting former waters of the United States and in doing so will need to rely on state authorities such as Porter-Cologne provisions that apply to waters of the state. This will require the Water Boards to perform investigation and enforcement functions previously performed by the US EPA.

The Water Boards are requesting 9.0 of the 15.0 positions to be distributed across the nine Regional Water Boards for the following tasks associated with wetlands protection:

- Replacing US EPA field presence in conducting dredge and fill related inspections and complaint response;
- Providing education and compliance assistance to ensure that the regulated public understand continuing state jurisdiction over former waters of the United States; and
- Pursuing formal enforcement to compel restoration and mitigation of unauthorized fill into state wetlands.

Additionally, the Water Boards are requesting 6.0 of the 15.0 positions to provide additional legal and technical support to development water quality enforcement strategies that rely exclusively on authority to protect waters of the state. Although the context for the Sackett Ruling was a Clean Waters Act Section 404 dredge or fill permit for discharges to wetlands, the decision will likely have ramifications for the Clean Water Act Section 402 NPDES point source permit program and discharges to non-wetland waters. Where the Clean Water Act no longer regulates the discharge of a pollutant, dischargers will need to obtain WDRs from the Water Boards in the form of non-NPDES WDRs. The Water Boards have already seen an impact on existing enforcement cases across several NPDES program areas where there have been jurisdictional arguments raised, as well as an increase of dischargers claiming exemption from industrial and construction stormwater permitting requirements based on the post-Sackett Ruling definition of waters of the United States.

The Water Boards' authority to protect water that do not qualify as waters of the United States are less efficient and more labor intensive. Porter-Cologne currently provides authority to impose administrative civil liabilities for violations of non-NPDES WDRs only if the violation results in a discharge to waters, is in violation of an existing order, or if the violation involves failure to submit a technical or monitoring report. (Water Code section 13350.) This leaves a significant gap in enforcement for many of the critical requirements of these permits, particularly those relating to violations of required management practices that do not result in a discharge of waste to waters. To maintain the current level of protection for former waters of the United States, the Water Boards will need a greater field presence and will need to utilize a less efficient enforcement strategy that involves the issuance of a formal order (such as a cease-and-desist order) prior to being able to impose penalties for violations. Furthermore, the maximum penalties for violations of water quality laws affecting waters that do not qualify as waters of the United States are considerably lower than the maximum penalties for water quality violations affecting waters of the United States, and do not provide as effective a deterrent to prevent those violations. (Water Code section 13350.)

The requested resources will provide a variety of additional legal and technical support including:

- Assist with determining appropriate regulatory mechanism and coverage for construction sites and industrial facilities;
- Revise enforcement and inspection procedures and provide training on the revised procedures;
- Respond to the increasing number of challenges on the grounds that there is no discharge to waters of the United States across NPDES programs; and
- Develop new investigation methods, evidence gathering, and enforcement strategies which utilize waters of the state authorities or demonstrate Clean Water Act jurisdiction.

6. Need for IT Infrastructure Changes

The Water Boards request \$1,142,000 in contract funds to develop IT solutions needed to support program activities. The Stage 1 Business Analysis identifies the following key problems facing the Water Boards' 401 Certification Program:

- The current application is paper-based, leading to a number of problems including inconsistencies among regions.
- Water Board staff lack a consistent process for managing and tracking compliance with the regulatory timelines for multiple projects.
- There is no unified efficient communication process with applicants, resulting in lack of appropriate notice to applicants, and frequent rework requests.
- Currently there is no standard tool or method for the Water Board 401 Certification Program supervisors to use to assign projects and track staff progress on submitted applications. Similarly, there is no way for applicants to track application status.
- Maps and data are not submitted in formats that can be assessed using GIS software so staff must manually analyze the information to assess project impacts.

To plan an integrated IT solution that would address these problems, the Water Boards are requesting contract funding to plan and define a new statewide electronic application solution to issue permits for discharges of dredged or fill material. Planning support services are needed to guide the California Department of Technology (CDT) Project Approval Life Cycle (PAL), planning phase – stage 2 through 4. It would include working with IT staff and contractors/vendors in developing statement of work; project planning; requirement definitions; procurement planning; quality assurance; selection of private consultants and vendors; and cost, time, and scope management.

C. Departmentwide and Statewide Considerations

The Water Boards and specifically the affected program staff play a critical role in several administration priorities. Lacking additional resources, staff would need to be diverted from these projects to address the increases in workload for Water Board non-discretionary activities and would be unavailable to support these administration priorities. These programs include:

- California Wildfire and Forest Resilience Taskforce – Staff coordinate closely with other agencies within the taskforce to implement the Wildfire and Forest Resilience Action Plan. Under the Action Plan the Water Boards, in coordination with the California Department of Fish and Wildlife (CDFW), the Board of Forestry, and CalFire, is pursuing a number of permitting efficiency projects including development of a streamlined water quality permit for wildfire prevention activities conducted by utility companies.
- Cutting the Green Tape – In 2022 the Water Boards adopted the Statewide Restoration General Order, a streamlined permit for restoration activities that is a centerpiece of the Cutting the Green Tape initiative. In 2021 Governor Newsom signed Senate Bill (SB) 155, that provided a new CEQA Statutory Exemption for Restoration Projects (SERP) that meet certain requirements. The Water Boards and CDFW are coordinating closely to ensure efficient implementation and maximum value of these two programs.
- Racial Equity Initiatives – In September 2022 Governor Newsom issued Executive Order N-16-22 directing state agencies and departments to take additional actions to embed equity analysis and considerations in their mission, policies, and practices. The Water Boards had already adopted a Racial Equity Resolution in November 2021 and subsequently adopted a Racial Equity Action Plan in 2023. This action plan includes specific implementation requirements for each division, including the programs affected by the Sackett Ruling.

D. Outcomes and Accountability

This BCP does not assume an overall increase in the number of applications for either 401 Certifications or NPDES permits. Instead, the Sackett Ruling will change what tools the Water Boards use to process such applications. As a result, the Projected Outcomes table identifies staff's estimate of the change in work outcomes, with fewer 401 Certifications and NPDES permits issued and more WDRs issued. The BCP will provide the Water Boards the ability to absorb the additional workload that will come from this change in regulatory tools. Because this workload is largely non-discretionary, absent this BCP, the projected outcomes would be the same, but other Water Board activities would be curtailed as discussed in the statewide considerations section.

Projected Outcomes

Workload Measure	CY	BY	BY+1	BY+2	BY+3	BY+4
Application for Individual 401 Certifications	830	675	675	675	675	675
Enrollments under the 401 Certification Nationwide Permit General Certification	115	91	91	91	91	91
Applications for Individual Dredge or Fill WDRs	15	165	165	165	115	115
Construction Stormwater NPDES Enrollments	10,575	7,900	7,900	7,900	7,900	7,900
Construction Stormwater WDR Enrollments	0	2,650	2,650	2,650	2,650	2,650
Industrial Stormwater NPDES Enrollments	14,625	10,875	10,875	10,875	10,875	10,875
Industrial Stormwater WDR Enrollments	0	3,625	3,625	3,625	3,625	3,625
Inspections Conducted	4,100	4,100	4,100	4,100	4,100	4,100
Enforcement Actions Taken	3,700	3,700	3,700	3,700	3,700	3,700

E. Implementation Plan

Resources will be assigned to existing workload in a phased approach. The Water Board proposes to add 26 positions in year one. The Balance (12.0 positions) will be added in year two. Specific allocation of program resources is provided below.

Details of Phased Allocation of Requested Positions

BCP ITEM	TASK	PY NEEDS (PHASE 2 IN PARENTHESIS)*				PHASE IN PLAN
		DWQ	OE	OCC	RB	
Replacing US Army Corps of Engineers Services	Verification of Aquatic Resources (and other duties)	--	--	--	3.0	N/A
Adopt Stream Delineation Procedures	N/A	2.0	--	--	--	N/A
Increased Workload from Issuing WDRs	Regional Board Adoption of WDRs	--	--	--	5.0 (4.0)	Delay 4.0 positions to year two. Some projects may be delayed in Year one to redirect staff to enforcement (BCP item five) as needed.
	Development of General WDR Permits	3.0	--	--	--	N/A
	Legal Support	--	--	1.0	--	N/A
Issue State WDR Permits for Construction and Industrial Stormwater Discharges"	N/A	2.0 (3.0)	--	--	--	2.0 positions to work on Construction Stormwater WDR Permits in Year one. 3.0.0 additional positions in Year two to work on Construction Stormwater and Industrial Stormwater WDR Permits.
Replacement of Federal Enforcement Activities	Replace US EPA Field Presence and conduct other outreach/enforcement	--	--	--	4.0 (5.0)	Delay 5.0 RB Positions for this task until year two. Redirect enforcement workload to the positions from BCP item three as necessary
	OE Support	--	6.0	--	--	N/A
Immediate Positions		7.0	6.0	1.0	12.0	Total = 26.0 Positions
Delayed Positions		3.0	--	--	9.0	Total = 12.0 Positions
Total Positions		10.0	6.0	1.0	21.0	Total = 38.0 Positions

*Division of Water Quality (DWQ), Office of Enforcement (OE), Office of Chief Counsel (OCC), Regional Boards (RB)

Specific schedules for the discrete deliverables will be developed as part of project initiation and are extremely variable based on the level of controversy and public participation, but a general overview of expected milestones and delivery dates based on similar projects is provided in the Timeline for Implementation table below.

Timeline for Implementation

ACTIVITY AND MILESTONE	ESTIMATED DATE
<i>Training on verification of aquatic resource delineation reports</i>	
Contracting process	July 2024 – January 2025
Develop training materials	January 2025 – March 2025
Provide training to regional board staff	March 2025 to June 2025
<i>Develop delineation procedures for streams and riparian areas</i>	
Project definition and CEQA scoping	July 2024 – October 2024
Procedure development and initial stakeholder outreach	October 2024 – March 2025
Public draft review and response to comments	March 2025 – December 2025
Board adoption process	January 2026 – March 2026
<i>Develop WDR for activities previously permitted under 401 Certification Nationwide Permits</i>	
Readopt existing 401 Certification Nationwide Permits as WDRs with minimal modifications	July 2024 to December 2024
Project definition and CEQA scoping	January 2025 – March 2025
Procedure development and initial stakeholder outreach	April 2025 – December 2025
Public draft review and response to comments	January 2026– June 2026
Board adoption process	July 2026 – December 2026

Update training to reflect new procedures	January 2027 – March 2027
Implementation training	March 2027 – July 2027
<i>Prepare and adopt WDRs for construction and industrial stormwater discharges to non-federal waters of the state</i>	
Project definition and CEQA scoping	July 2024 – October 2024
Procedure development and initial stakeholder outreach	October 2024 – March 2025
Public draft review and response to comments	March 2025 – December 2025
Board adoption process	January 2026 – March 2026
Implementation training	March 2026- July 2026

F. Supplemental Information (If Applicable)

N/A

BCP Fiscal Detail Sheet

BCP Title: Resource Needs to Address Impacts on Project Permitting Resulting from Recent Supreme Court Decisions

BR Name: 3940-024-BCP-2024-GB

Budget Request Summary

Personal Services

Personal Services	FY24 Current Year	FY24 Budget Year	FY24 BY+1	FY24 BY+2	FY24 BY+3	FY24 BY+4
Positions - Permanent	0.0	26.0	38.0	38.0	38.0	38.0
Total Positions	0.0	26.0	38.0	38.0	38.0	38.0
Salaries and Wages Earnings - Permanent	0	2,300	3,393	3,393	3,393	3,393
Total Salaries and Wages	\$0	\$2,300	\$3,393	\$3,393	\$3,393	\$3,393
Total Staff Benefits	0	1,204	1,776	1,776	1,776	1,776
Total Personal Services	\$0	\$3,504	\$5,169	\$5,169	\$5,169	\$5,169

Operating Expenses and Equipment

Operating Expenses and Equipment	FY24 Current Year	FY24 Budget Year	FY24 BY+1	FY24 BY+2	FY24 BY+3	FY24 BY+4
5301 - General Expense	0	39	57	57	57	57
5302 - Printing	0	70	103	103	103	103
5304 - Communications	0	175	258	258	258	258
5306 - Postage	0	35	52	52	52	52
5320 - Travel: In-State	0	288	465	465	465	465
5322 - Training	0	280	414	414	414	414
5324 - Facilities Operation	0	350	517	517	517	517
5340 - Consulting and Professional Services - External	0	1,377	35	35	35	35
Total Operating Expenses and Equipment	\$0	\$2,614	\$1,901	\$1,901	\$1,901	\$1,901

Total Budget Request

Total Budget Request	FY24 Current Year	FY24 Budget Year	FY24 BY+1	FY24 BY+2	FY24 BY+3	FY24 BY+4
Total Budget Request	\$0	\$6,118	\$7,070	\$7,070	\$7,070	\$7,070

Fund Summary

Fund Source

Fund Source	FY24 Current Year	FY24 Budget Year	FY24 BY+1	FY24 BY+2	FY24 BY+3	FY24 BY+4
State Operations - 0193 - Waste Discharge Permit Fund	0	6,118	7,070	7,070	7,070	7,070
Total State Operations Expenditures	\$0	\$6,118	\$7,070	\$7,070	\$7,070	\$7,070
Total All Funds	\$0	\$6,118	\$7,070	\$7,070	\$7,070	\$7,070

Program Summary

Program Funding

Program Funding	FY24 Current Year	FY24 Budget Year	FY24 BY+1	FY24 BY+2	FY24 BY+3	FY24 BY+4
3560 - Water Quality	0	6,118	7,070	7,070	7,070	7,070
Total All Programs	\$0	\$6,118	\$7,070	\$7,070	\$7,070	\$7,070

Personal Services Details

Positions

Positions	FY24 Current Year	FY24 Budget Year	FY24 BY+1	FY24 BY+2	FY24 BY+3	FY24 BY+4
0762 - Environmental Scientist	0.0	15.0	19.0	19.0	19.0	19.0
0765 - Sr Envirnal Scientist (Spec)	0.0	0.0	2.0	2.0	2.0	2.0
3756 - Engring Geologist	0.0	2.0	6.0	6.0	6.0	6.0
3846 - Cntrl Engr	0.0	5.0	7.0	7.0	7.0	7.0
5333 - Sr Legal Analyst	0.0	1.0	1.0	1.0	1.0	1.0
5749 - Prin Dep Legislative Counsel I	0.0	1.0	1.0	1.0	1.0	1.0
5778 - Atty	0.0	1.0	1.0	1.0	1.0	1.0
5781 - Atty V	0.0	1.0	1.0	1.0	1.0	1.0
Total Positions	0.0	26.0	38.0	38.0	38.0	38.0

Salaries and Wages

Salaries and Wages	FY24 Current Year	FY24 Budget Year	FY24 BY+1	FY24 BY+2	FY24 BY+3	FY24 BY+4
0762 - Environmental Scientist	0	1,084	1,373	1,373	1,373	1,373
0765 - Sr Envirnal Scientist (Spec)	0	0	198	198	198	198
3756 - Engring Geologist	0	202	606	606	606	606
3846 - Cntrl Engr	0	505	707	707	707	707
5333 - Sr Legal Analyst	0	80	80	80	80	80
5749 - Prin Dep Legislative Counsel I	0	165	165	165	165	165
5778 - Atty	0	105	105	105	105	105
5781 - Atty V	0	159	159	159	159	159
Total Salaries and Wages	\$0	\$2,300	\$3,393	\$3,393	\$3,393	\$3,393

Staff Benefits

Staff Benefits	FY24 Current Year	FY24 Budget Year	FY24 BY+1	FY24 BY+2	FY24 BY+3	FY24 BY+4
5150350 - Health Insurance	0	614	906	906	906	906
5150600 - Retirement - General	0	590	870	870	870	870
Total Staff Benefits	\$0	\$1,204	\$1,776	\$1,776	\$1,776	\$1,776

Total Personal Services

Total Personal Services	FY24 Current	FY24 Budget	FY24 BY+1	FY24 BY+2	FY24 BY+3	FY24 BY+4

	Year	Year				
Total Personal Services	\$0	\$3,504	\$5,169	\$5,169	\$5,169	\$5,169