



State Water Resources Control Board

NOTICE OF PROPOSED EMERGENCY RULEMAKING

Water Rights Fee Adjustment to Correct Fiscal Year 2016-2017 Billing Error

Amendments to Division 3 of Title 23 of the California Code of Regulations

Required Notice of Proposed Emergency Action

Government Code section 11346.1, subdivision (a)(2) requires that, at least five working days prior to submission of a proposed emergency action to the Office of Administrative Law (OAL), the adopting agency must provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. This document provides the required notice. Upon receiving the proposed emergency regulation, OAL shall publish the notice on their website and allow interested persons five calendar days to submit comments on the proposed emergency regulation as set forth in Government Code section 11349.6.

Proposed Emergency Action

Effective January 1, 2004, the Water Code was amended to require the State Water Resources Control Board (State Water Board) to adopt emergency regulations revising and establishing fees to be deposited in the Water Rights Fund in the State Treasury (Wat. Code, §§ 1525, 1530, 1551, 13160.1). The Water Code requires the State Water Board to review and revise the fee schedule each fiscal year as necessary to conform to the amounts appropriated by the Legislature for expenditure, from the Water Rights Fund for support of water rights program activities. The Executive Director of the State Water Board is authorized to revise and readopt emergency regulations adopted by the State Water Board.

On September 20, 2016, the State Water Board adopted an emergency regulation amending water rights fee schedules in title 23, division 3, chapter 5, sections 1062, 1064, and 1066 of the California Code of Regulations. In general, the emergency regulation (1) increased annual water right fees to conform to amounts appropriated by the Legislature from the Water Rights Fund, and (2) adjusted the caps on application and petition filing fees based on the consumer price index.

Upon sending out the annual invoices for applications, permits and licenses for Fiscal Year 2016-17 an error was discovered in the per-acre-foot charge formula for approximately 7,216 water rights holders, leading to those water rights' holders being overcharged between \$0.06 and \$0.66 per affected water right. State Water Board staff

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have identified these fee payers and will be, by this proposed rulemaking, applying a credit in the amount of any overage billed in Fiscal Year 2016-17 to the annual billing invoice amount for Fiscal Year 2017-18. This credit will be automatically applied to any water right holders who were overcharged for Fiscal Year 2016-17, and therefore no petitioning is necessary in order to receive the credit for the above referenced billing overage.

Proposed Text of Emergency Regulation

See the attached proposed text of the emergency regulation.

Finding of Emergency (Gov. Code, § 11346.1, subd. (b))

The State Water Board has a mandatory legal duty to assess fees and to adopt the schedule of fees by emergency regulation (Wat. Code, §§ 1525, 1530, 13160.1). Water Code sections 1530, subdivision (b) and 13160.1, subdivision (d)(2) state that “[t]he adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare.” Notwithstanding chapter 3.5 (commencing with section 11340) of part 1 of division 3 the Government Code, the emergency regulation shall remain in effect until revised by the State Water Board (Wat. Code, §§ 1530, 13160.1).

Adopting the proposed amendments before the deadline for petitions for reconsideration on fee assessments is essential to avoid unnecessary cost for both fee payers and for the State Water Board. Without immediate adoption of the proposed amendments, fee payers would be required to file petitions for reconsideration to be assured of a refund or credit for the excess charges. But the process for petitions for reconsideration, including notice to the fee payer of the State Water Board taking action on the petition, greatly exceeds the amounts overcharged. Timely collection of fees to conform to amounts appropriated by the Legislature from the Water Rights Fund for the support of water right program activities is critical for the continued operation of the water rights program. Without fee revenue in the amounts appropriated, much of the water rights program would be in danger of being shut down. Continued administration of the water rights program is essential to the economy and environment of the State of California. Without funding for the program, critical water transfers and changes in water project operations would not be approved, the security of water rights needed for the state's water supply projects would be undermined, and the environment would be threatened. New water supply projects for irrigation or municipal use, and modification of existing projects involving changes in permitted or licensed water rights, could not move forward. The water rights program also is important for the protection of public health. For example, the water rights program applies and enforces Bay-Delta water quality standards that protect the drinking water supplies for 22 million Californians. In sum, adoption of the proposed regulation is necessary for the immediate preservation of the public health and welfare.

The State Water Board is unable to address the situation through non-emergency regulations because, as discussed above, it has a mandatory legal duty to adopt the fee schedules by emergency regulation.

Authority and Reference (Gov. Code, § 11346.5, subd. (a)(2))

Water Code sections 1058 and 1530 provide authority for the emergency regulation. The emergency regulation implements, interprets, or makes specific Water Code sections 386, 1228.3, 1228.5, 1425, 1426, 1525, 1535, 1536 and 1537.

Informative Digest (Gov. Code, § 11346.5, subd. (a)(3))

Under the Water Code and existing regulations, a person filing a water right application, petition, registration, groundwater recordation or other filing, must pay a filing fee to the State Water Board. Existing regulations also establish annual fees for water rights permits, licenses, water leases, and applications. In addition, the existing regulations establish requirements for filing a petition for reconsideration of a fee determination made by the State Water Board. The water rights fee regulations are contained in division 3 of title 23 of the California Code of Regulations. An overview of the objectives and benefits of the regulations is provided above, under “Finding of Emergency.”

The proposed emergency regulation would provide a credit in the amount of any overage billed in Fiscal Year 2016-17 to the annual billing invoice amount for Fiscal Year 2017-18, allowing the Board to correct for the error without need for fee payors to petition for reconsideration, the Board to reissue all affected bills, or otherwise unnecessarily expend Water Rights funds to correct the error

There is no comparable federal statute or regulation. The proposed regulation is not inconsistent or incompatible with existing state regulations.

Other Matters Prescribed by Statute (Gov. Code, § 11346.5, subd. (a)(4))

No other matters are prescribed by statute or regulation applicable to the State Water Board’s water right fees.

Local Mandate (Gov. Code, § 11346.5, subd. (a)(5))

The proposed emergency regulation does not impose a mandate on local agencies or school districts because it does not mandate a new program or a higher level of service of an existing program. The fee schedule applies equally to public and private entities, and is not unique to local government. No state reimbursement is required by part 7 (commencing with section 17500) of division 4 of the Government Code.

Estimate of Cost or Savings (Gov. Code, § 11346.5, subd. (a)(6))

Under the proposed emergency regulation adjustment in annual permit and license fees, any local and state agencies impacted by the error referenced above will receive credit in the amount of any overage billed in Fiscal Year 2016-17 to the annual billing invoice amount for Fiscal Year 2017-18.

There is no cost to any local agency or school district for which reimbursement is required.

There is no cost or savings in federal funding to the state.