



State Water Resources Control Board

NOTICE OF PROPOSED EMERGENCY RULEMAKING

Water Rights Fees

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. After the submission of the proposed emergency to OAL, OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations, as set forth in Government Code section 11349.6. This document provides the required notice.

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, sections 1525, 1530, 1551, 13160.1.) The Water Code authorizes the State Water Board to periodically adjust the fees and requires the State Water Board to revise the fee schedule each fiscal year as necessary to conform to the revenue levels set forth in the annual Budget Act. Accordingly, each year, the State Water Board has reviewed and revised the fee schedule as necessary, as required by the Water Code. On September 19, 2011, the State Water Board adopted Resolution No. 2011-0043, which revised the emergency water rights fee regulations and schedules consistent with the revenue levels set forth in the Budget Act for Fiscal Year (FY) 2011-12.

Proposed Text of Emergency Regulations

See the attached proposed text of the emergency regulations.

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

The State Water Board has a mandatory legal duty to adopt emergency regulations revising the fees as necessary each fiscal year pursuant to the Water Code. (Wat. Code, sections 1525, subd. (d)(1), 1530, subd. (a), 13160.1, subd. (d)(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 of title 2 of the Government Code, the emergency regulations shall remain in effect until revised by the State Water Board. (*Ibid.*)

Moreover, the State Water Board finds that the amendments to the regulations must be adopted immediately in order to allow for the timely collection of fees consistent with the Budget Act. Without fee revenue in the amounts established by the Budget Act, much of the water rights program would have to be 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 regulations 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, section 11346.5, subd. (a)(2))

Water Code sections 1058 and 1530 provide authority for the emergency regulations. The revised emergency regulations implement, interpret, or make specific Water Code sections 386, 1525, 1535, 1536 and 1537.

Informative Digest (Gov. Code, section 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 and schedules are contained in division 3 of title 23 of the California Code of Regulations.

In general, the revised emergency regulations would adjust the water right fee schedule to: (1) adjust the caps on application and petition filing fees based on changes in the consumer price index; (2) increase the minimum flat-rate charge from \$100 to \$150 for annual fees assessed on water right permits, licenses, water leases and pending applications; (3) increase the per acre-foot charge from \$0.03 to \$0.05 per acre-foot for annual fees assessed on water right permits, licenses, water leases and pending applications diverting over 10 acre-feet annually.

The purpose of the emergency regulations is to revise the water rights fee schedules consistent with the Budget Act for Fiscal Year 2011-12.

There is no comparable federal statute or regulation.

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

No other matters are prescribed by statute or regulation applicable to the State Water Board.

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

The proposed emergency regulations do not impose a mandate on local agencies or school districts because they do 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, section 11346.5, subd. (a)(6))

Under the proposed emergency regulations for this fiscal year, most local and state agencies will pay more in annual fees than last year due to the increase in fees (See Attachment 3a to Form 399). 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.

September 30, 2011
Date



Jeanine Townsend
Clerk to the Board

Attachments

**STATE WATER RESOURCES CONTROL BOARD
EMERGENCY REGULATIONS**

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

Amend the following section:

§ 1062. Filing Fees for Water Right Applications.

(a) A person who files a water right application shall pay to the board a filing fee as follows:

(1)(A) Except as provided in subparagraphs (B) and (C), the fee for a water right application shall be \$1,000, plus \$15 for each acre-foot that the applicant seeks to divert in excess of 10 acre-feet. The total fee shall not exceed ~~\$454,823~~ \$460,281, plus any additional fee due pursuant to subparagraphs (2) and (3).

(B) At a facility where a small hydroelectric generating facility meets the criteria for a Class 28 categorical exemption under the California Environmental Quality Act, as established in California Code of Regulations, title 14, section 15328, the fee shall be \$1,000.

(C) The fee for an application for a temporary permit filed under Water Code section 1425 shall be the greater of either (i) 50 percent of the fee calculated under subparagraph (A), above, or (ii) \$2,000; except that the fee for an application for a temporary permit at a small hydroelectric generating facility that meets the criteria for a Class 28 categorical exemption under the California Environmental Quality Act, as established in California Code of Regulations, title 14, section 15328, shall be \$1,000. The filing fee includes the annual permit fee if a temporary permit is issued.

(2) If a water right application is accompanied by a petition to revise a declaration of fully appropriated stream systems, then \$10,000 shall be added to the fee.

(3) If a water right application is accompanied by a petition for assignment of a state-filed application pursuant to Water Code section 10504, then \$5,000 shall be added to the fee.

(b) A person who filed a water right application on or after July 1, 2003, and prior to January 1, 2004, shall pay a supplemental filing fee equal to the difference between the filing fee already paid and the amount due pursuant to the regulation in effect on January 1, 2004.

(c) The application filing fee includes a non-refundable \$250 initial review fee.

Authority cited: Sections 1058 and 1530, Water Code. Reference: Sections 1425, 1426, 1525 and 1535, Water Code.

Amend the following section:

§ 1064. Filing Fees for Petitions or Requests.

(a) A person who files a petition or a request for release from priority shall pay to the board a filing fee for each water right application, permit or license covered by the petition or request in accordance with this section.

(1) For purposes of calculating the filing fee, a petition to change one or more terms of a single application, permit, license, or other water right shall be considered a single petition, provided that action can be taken on the changes simultaneously, except that a petition for an extension of time shall be considered a separate petition, subject to a separate fee, from a petition to change one or more other terms in a water right. A petitioner requesting changes to more than one application, permit, license, or other water right shall file a separate petition or petitions for each water right and a filing fee shall be required for each petition. A separate filing fee shall be required for each change petition subsequently filed on a water right that is already the subject of a pending petition for change.

(A) Except as provided in subparagraphs (i), (ii), and (iii), the fee for a petition to change the terms of an application, permit or license shall be as follows. The fee shall be a minimum of \$1,000. If the total annual amount of diversion sought by the pending application or authorized by the permit or license, as calculated in accordance with section 1066, is greater than 10 acre-feet, then the petitioner shall pay an additional \$0.30 for each acre-foot in excess of 10 acre-feet. The total fee shall not exceed ~~\$5,713~~ \$5,782.

(i) The fee for a petition for change pursuant only to Water Code section 1707 shall be \$850.

(ii) The fee for a change petition involving a transfer of water pursuant to Water Code section 382, 1435, 1701, 1725, or 1735 shall be \$2,000, plus \$0.30 for each acre-foot that the petitioner seeks to transfer in excess of 10 acre-feet. The fee shall be based on the maximum amount of water proposed to be transferred annually, not the amount of water proposed to be transferred over the entire term of the transfer. The total fee shall not exceed ~~\$454,823~~ \$460,281.

(iii) The fee for a petition for extension of time shall be \$1,000.

(2) The fee for a petition to change the point of discharge, place of use, or purpose of use of treated wastewater pursuant to Water Code section 1211 shall be \$1,000.

(3) The fee for a request for release from priority of a state-filed application pursuant to Water Code section 10504 shall be \$5,000.

(4) The fee for a petition filed pursuant to Water Code section 1228.7 to change the point of diversion or place of use under a registration of an appropriation for small domestic or livestock stockpond use shall be \$250.

(b) A person who filed a petition or a request for release from priority on or after July 1, 2003, and prior to January 1, 2004, shall pay a supplemental filing fee equal to the difference between the filing fee already paid and the amount due pursuant to the regulation in effect on January 1, 2004.

(c) The petition filing fee includes a non-refundable \$250 initial review fee.

Authority cited: Sections 1058 and 1530, Water Code. Reference: Sections 386, 1525 and 1535, Water Code.

Amend the following section:

§ 1066. Annual Fees for Permits or Licenses.

(a) A person who holds a water right permit or license shall pay a minimum annual fee of ~~\$100~~ \$150. If the total annual amount of diversion authorized by the permit or license is greater than 10 acre-feet, then the permittee or licensee shall pay an additional ~~\$0.03~~ \$0.050 for each acre-foot in excess of 10 acre-feet

(1) For permits or licenses issued prior to the beginning of the year for which the fee is imposed, the board shall calculate annual fees according to the total annual amount of diversion authorized by the permit or license as of the beginning of the year.

(2) The board shall calculate annual fees for permits issued on or after the beginning of the year according to the total annual amount of diversion authorized by the permit as issued by the board.

(b) The board shall calculate the annual fee based on the total annual amount of diversion authorized by the permit or license, without regard to the availability of water for diversion or any bypass requirements or other conditions or constraints that may have the practical effect of limiting diversions but do not constitute a condition of the permit or license that expressly sets a maximum amount of diversion.

(1) If the permit or license does not expressly identify the total annual amount of diversion, the board shall calculate the total annual amount based on the rate of authorized diversion multiplied by the length of time in the authorized season of diversion.

(2) If the permit or license contains an annual diversion limitation that is applicable only to that permit or license, and the limitation is less than the calculated diversion volume, the fee shall be based on the amount specified in the limitation.

(3) If a person holds multiple water rights that contain an annual diversion limitation that is applicable to the combination of those rights, but the person may still divert the full amount authorized under a particular right, then the fee shall be based on the total annual amount for that individual right.

Authority cited: Sections 1058 and 1530, Water Code. Reference: Sections 1525, 1536 and 1537, Water Code.

Fiscal Year 2011-12 Fee Schedule Summary

Annual Fee Categories (Collected by State Board of Equalization)	
Fee Category	Proposed Fiscal Year 2011-12 Fee
Permit & License Annual Fees ^[1]	\$150 plus \$0.050 per each acre-foot greater than 10 acre-feet
Pending Application Annual Fee ^[2]	\$150 plus \$0.050-per each acre-foot greater than 10 acre-feet
Petition Annual Fee ^[3]	\$1,000
Water Lease Annual Fee (for leases under Water Code § 1020 et seq. involving water districts) ^[1]	\$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	\$1,000 plus \$0.342 per Kilowatt
Projects issued FERC licenses pursuant to 401 certification	\$100 plus \$0.125 per Kilowatt

One-Time Fee Categories (Collected by State Water Board)	
Fee Category	Proposed Fiscal Year 2011-12 Fee
Application ^{[4][5]}	\$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 \$460,281, whichever is less.
Application for Small Hydroelectric ^[5]	\$1,000
Application for Temporary Permit filed pursuant to Water Code §1425 ^{[4][5]}	\$2,000 or 50% of the fee calculated under §1062(a)(1)(A), whichever is greater
Application for Temporary Permit for Small Hydroelectric that meets criteria established in CCR, title 14, §15328 ^[5]	\$1,000
Petition to Revise Declaration of Fully Appropriated Streams filed with Application	\$10,000 in addition to Application Fee
Petition for Assignment of a State Filed Application	\$5,000 in addition to Application Fee
Change Petition ^[5]	\$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 \$5,782, whichever is less
Change Petition Pursuant to Water Code §1707 ^[5]	\$850
Change Petition involving a transfer of water pursuant to Water Code section 382, 1435, 1701, 1725, or 1735 ^[5]	\$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 \$460,281, whichever is less
Time Extension Petition ^[5]	\$1,000
Wastewater Petitions ^[5]	\$1,000
Request for Release from Priority (State Filing) ^[5]	\$5,000 in addition to Application Fee
Change Petition filed pursuant to Water Code section 1228.7 for a domestic or stockpond registration	\$250
401 Certification for Water Development Projects not subject to FERC Licensing	Fee Based on Project Specific Costs
Water Lease Application (for leases under Water Code § 1020 et seq. not involving water districts)	\$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
Proof of Claim under Water Code §2575 et seq.	\$500
Groundwater Recordation under Water Code §4999 et seq.	\$50

^[1] 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.

^[2] Due under specific circumstances such as: project is initiated prior to the State Water Board issuing a permit authorizing the diversion; applicant requests a delay in processing application; applicant is lead agency under California Environmental Quality Act (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.

^[3] Due under specific circumstances such as: petitioner diverts water prior to the State 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.

^[4] 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.

^[5] This filing fee is inclusive of a non-refundable \$250 fee for an initial review.