
State Water Resources Control Board

NOTICE OF PROPOSED EMERGENCY RULEMAKING

Water Rights Fees for Fiscal Year 2022-23

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 or Board) to adopt emergency regulations revising and establishing fees to be deposited in the Water Rights Fund (WRF) in the State Treasury (Wat. Code, §§ 1525, 1530, 1551). 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 WRF for support of water rights program activities.

On September 20, 2022, the State Water Board will consider adopting emergency regulations amending water rights fee schedules in title 23, sections 1040, 1044, 1062, 1063, 1064, 1066 and 3833.1 of the California Code of Regulations.

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). Water Code section 1530, subdivision (b) states 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).

Moreover, the State Water Board finds that the proposed amendments to the Board’s fee regulations must be adopted immediately in order to allow for the timely collection of fees to conform to amounts appropriated by the Legislature from the WRF for the support of water right program activities. 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 348, 1058, 1529.5, 1530, 5107, 5208, 10736 and 13160.1 provide authority for the emergency regulation. The emergency regulation implements, interprets, or makes specific Water Code sections 348, 386, 1228.3, 1228.5, 1228.7, 1425, 1426, 1525, 1528, 1529.5, 1530, 1535, 1536, 1537, 1551, 1552, 5202, 10735.4, 10735.6 and 13160.1, and Health and Safety Code section 16275.

Water Code section 1530 provides deemed emergency regulation authority for sections 1040 through 1069.

Water Code section 13160.1 provides deemed emergency regulation authority for section 3833.1.

These statutes state “[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.”

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, applications and requests for water quality certification. 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 adjust the fee schedule in FY 2022-23 to: (1) increase annual water right application, permit and license fees to conform to amounts appropriated by the Legislature from the WRF, (2) adjust the caps on application and underground storage streamlined permitting process fees based on the California consumer price index, (3) adjust the fees for Clean Water Act section 401 certifications for projects undergoing licensing or operating pursuant to licenses issued by the Federal Energy Regulatory Commission (FERC), (4) implement a new fee of \$1,000, and set conditions under which the fee may be waived, for watershed-wide petitions necessary for implementing voluntary agreements to provide regional sharing of water diversions, and (5) change the deadline for filing of certain reports of groundwater extraction to conform to the changed deadlines in statute.

There is no comparable federal statute or regulation. After conducting a review for any regulations that would relate to or affect this area, the Board has determined that 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’s increase in FERC and annual permit and license fees, most local and state agencies will pay more in annual fees than last year. The California Department of Water Resources (Department) holds water rights for projects associated with the State Water Project for which the increased cost will be approximately \$130,680 for FY 2022-23. Additionally, the Department will have increased FERC-related 401 certification fees of approximately \$114,857. However, it

is assumed the Department will pass its fees through to the State Water Project contractors; therefore, any increase in costs will not be borne by the State. All other state agencies with water rights will only incur increased costs for FY 2022-23 of less than \$203 per water right and should be able to absorb these costs within their existing budgets. Furthermore, state and local agencies may also pass their costs to their contractors or constituents. No other state agency has FERC-related 401 certifications pending or licensed at this time.

Under the proposed emergency regulations, there will be an increase in the caps for application and petition filing fees. As a result, local and state agencies may be subject to increased costs. However, it is impossible to predict what filings the State Water Board will receive, though it can be assumed that state and local agencies are unlikely to submit new water right applications or petitions for amounts exceeding the current filing fee cap. If a state or local agency were to be subject to fees greater than the current filing fee cap, they typically will pass along all water right fees to the contractors or otherwise recover such costs. Therefore, it is unlikely that any state or local agencies will see increased costs due to the increase in caps on the application and petition filing fees.

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.

23 CCR § 1040

§ 1040. Annual Filing Fee Schedule.

Except as provided in section 1041, any person required to file a report shall submit to the board an annual filing fee in accordance with the following schedule:

(a) For groundwater extractions described in section 5202, subdivision (a)(2) of the Water Code, but not section 5202, subdivision (a)(1) of the Water Code:

(1) The annual fee is \$300 per well plus:

(A) \$10 per acre-foot of groundwater extracted during the preceding water year if the person uses a meter to measure groundwater extractions and certifies on a form provided by the Board that the measurements were made using a meter.

(B) \$25 per acre-foot of groundwater extracted during the preceding water year if the person does not use a meter to measure groundwater extractions or fails to certify on a form provided by the Board that the measurements were made using a meter.

(2) For groundwater extractions in an area that became part of an agency's management area during the preceding water year and was within an agency's management area as of September 30, volumetric charges required by subdivision (a)(1) will be based on the volume of groundwater extracted during the portion of the preceding water year when the area was not within the management area of an agency.

(3) For groundwater extractions in an area that is not within the management area of an agency as of September 30, the volumetric charges required by subdivision (a)(1) will be based on the volume of groundwater the person extracted during the entire water year.

(b) For groundwater extractions described in section 5202, subdivision (a)(1) of the Water Code:

(1) The annual fee is \$300 per well plus a volumetric charge of \$40 per acre-foot of groundwater extracted during the preceding water year, except that for de minimis extractors required to file a report, the annual fee is \$100 per well.

(2) For groundwater extractions in a basin where the board has determined pursuant to section 10735.4, subdivision (c) or section 10735.6, subdivision (b) of the Water Code that the deficiencies resulting in the probationary designation have not been remedied, an additional volumetric charge of \$15 per acre-foot of groundwater extracted during the preceding water year shall apply to the fee required by subdivision (b)(1).

(c) For persons required to file a report who fail to file the report by ~~December 15~~February 1, the annual fee shall include an additional charge of 25 percent of the annual fee described in subdivisions (a) and (b), plus 25 percent of the annual fee described in subdivisions (a) and (b) for each 30-day period after ~~December 15~~February 1 in which the report has not been filed. In no case shall the additional charge exceed three times the annual fee described in subdivisions (a) and (b).

Authority: Sections 1529.5, 1530, 5107, 5208 and 10736(d)(3), Water Code.

Reference: Sections 5202, 5202(a)(1), 5202(a)(2), 10735.4(c) and 10735.6(b), Water Code.

23 CCR § 1044

§ 1044. Administration of Fees.

(a) Annual filing fees shall be based on the regulations in effect at the time of filing. Annual filing fees for the report for the prior water year are due and payable on ~~February 15~~April 1, or thirty days after the Board issues an invoice, whichever is later.

(b) The Board may waive requirements under this article for any person or class of extractor if the waiver is determined by the board to advance implementation of Part 2.74 of Division 6 of the Water Code. Any person subject to this article may request a waiver, provided that the person is in compliance with the groundwater extraction reporting requirements described in Water Code section 5202, subdivision (a) and is a low-income resident or a public water system serving a disadvantaged community where the primary purpose of providing water is for human consumption, cooking and sanitary purposes.

(c) For purposes of this section, a low-income resident is: (1) someone whose household income is 200 percent or less of the federal poverty level (for one-person households, program eligibility shall be based on two-person household guideline levels) or (2) someone who is enrolled in a qualified public assistance program.

(d) For purposes of this section, a public water system has the same meaning as defined in Health and Safety Code section 116275, subdivision (h).

(e) For purposes of this section, a disadvantaged community has the same meaning as defined in California Code of Regulations, title 22, section 64300, subdivision (a).

(f) Any waiver request must be submitted to the Board within 30 days of when the fee is due pursuant to subdivision (a) of this section for the waiver to apply to that billing and must be supported by adequate substantiation of eligibility for the annual fee waiver. For any waiver request supported by adequate substantiation of eligibility that is submitted to the Board more than 30 days after the fee is due pursuant to subdivision (a) of this section, the reduction shall take effect in the subsequent fiscal year.

Authority: Sections 1058, 1529.5, 1530 and 10736, Water Code.

Reference: Section 116275, Health and Safety Code; and Sections 1525, 1536, 1537 and 5202, Water Code.

23 CCR § 1062

§ 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) through (E), 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 ~~\$579,952~~\$604,484, 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, other than a permit described in subparagraph (D) or (E) of this subdivision, shall be the greater of either (i) 50 percent of the fee calculated under subparagraph (A), above, or (ii) \$2,000.

(D) The fee for an application for a temporary permit under Water Code section 1425 for 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.

(E) The fee for an application for a temporary permit filed under Water Code section 1425 that is solely for purposes of diverting water from high flow events to underground storage for later beneficial use shall be the lesser of either (i) the fee calculated pursuant to subparagraph (C), above, or (ii) \$5,000 plus \$0.10 for every acre-foot of water applied for. For renewal of a temporary permit issued pursuant to this subparagraph, where the renewal proposes an identical project and is filed within one year of issuance of the prior temporary permit, the fee for renewal of a temporary permit shall be \$1,500 plus \$0.20 per acre-foot of water actually diverted under the renewed temporary permit. The portion of the application fee based on the amount diverted shall be due within 30 days of permit expiration, and shall be accompanied by a report of the amount actually diverted.

(F) The fee for an application for an appropriative right to divert water to underground storage that meets the criteria of this subparagraph shall be 75 percent of the fee calculated pursuant to subdivision (a)(1)(A). To be eligible for this reduced fee:

(i) The application must be for diversion of water only between December

1 and March 31;

(ii) The application must be primarily for diversion to underground storage in a groundwater basin identified in Bulletin 118;

(iii) The applicant must be a Groundwater Sustainability Agency or local agency as defined in Water Code section 10721;

iv) The applicant has completed all environmental documents required under the California Environmental Quality Act (CEQA); and

(v) The application proposes diversions only when either the streamflow at the point(s) of diversion is above the 90th percentile calculated from gage data during the period-of-record and the diversion rate is limited to 20 percent of the total streamflow, or when flows in the source waterbody at or near the point of diversion exceed thresholds that trigger flood control actions necessary to mitigate threats to human health and safety according to established written flood management protocols adopted by a flood control agency.

(G) The fee for an application for a temporary permit filed under Water Code section 1433.1 that is solely for purposes of diverting water to underground storage for later beneficial use shall be comprised of an initial filing fee equal to the lesser of either (i) five times the fee calculated pursuant to subparagraph (C), above, or (ii) ~~\$5,000~~11,000 plus \$0.10 for every acre-foot of water applied for, plus, in each fiscal year after the fiscal year in which the initial filing fee is due, \$0.20 per acre-foot of water actually diverted. The portion of the fee based on the amount actually diverted shall be due within 30 days after the end of the diversion season, and shall be accompanied by a report of the amount actually diverted.

(H) An applicant for a temporary permit filed under Water Code section 1433.1 shall also pay, in addition to the fee required by subdivision (a)(1)(G) of this section, a fee for the California Department of Fish and Wildlife review of the application as follows:

(i) For an application to divert less than 10,000 acre-feet of water per year, \$3,000 plus \$0.10 per acre-foot of water applied for; or

(ii) For an application to divert 10,000 acre-feet of water per year or more, \$5,000 plus \$0.10 per acre-foot of water applied for.

(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 initial review fee equal to \$500 plus 10 percent of the applicable application fee. No portion of the application fee shall be refundable once the application is either 1) accepted for filing or 2) the board communicates to the applicant that the applicant made a bona fide attempt to conform to the rules and regulations, but that the application is defective in some manner.

Authority: Sections 1058 and 1530, Water Code.

Reference: Sections 1425, 1426, 1525 and 1535, Water Code.

23 CCR § 1063

§ 1063. Annual Fees for Water Right Applications.

Under any of the following circumstances, a water right applicant shall pay an annual fee of \$750 plus ~~\$0.099~~ \$0.106 for each acre-foot in excess of 10 acre-feet, calculated as described in section 1066, subdivision (b).

(a) The diversion of water, the construction of diversion works, or the clearing of land where the diverted water will be used or stored, has been initiated before a permit is issued authorizing the diversion.

(b) The applicant requests the board to delay processing the water right application.

(c) The applicant is a lead agency under the California Environmental Quality Act (CEQA) (commencing with Public Resources Code section 21000) and has not adopted or certified a final environmental document for the project for which the application is filed, as may be required under CEQA, within two years after the board first provides notice of the water right application.

(d) The applicant fails to provide supplemental information requested pursuant to Water Code section 1275 within the time period provided.

(e) The Deputy Director for Water Rights has determined that a permit may be issued for the project, but the applicant has not paid filing fees required under Public Resources Code section 10005, Fish and Game Code section 711.4, or other law.

Authority: Sections 1058 and 1530, Water Code.

Reference: Sections 1525, 1536 and 1537, Water Code.

23 CCR § 1064

§ 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, except as provided in paragraph (A)(v). 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), (iii), ~~and (iv)~~ and (v), 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 \$0.40 for each acre-foot in excess of 10 acre-feet. The total fee shall not exceed \$20,000.

(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 \$0.50 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 ~~\$579,952~~ \$604,484.

(iii) The fee for a petition for extension of time shall be \$1,000 plus \$0.40 per acre-foot authorized for diversions in excess of 10 acre feet, or \$20,000, whichever is less; provided that the fee for a petition for extension of time filed in conjunction with a petition for another type of change for the same right shall be 50 percent of the fee otherwise applicable pursuant to this subparagraph.

(iv) The fee for a petition for issuance of separate permits or licenses pursuant to section 836, where there are no changes to the authorized point of diversion, place of use, purpose of use, or any other material term of the permit or license other than as necessary for the split, shall be \$850.

(v) The fee for one or more petitions for temporary change to permits or licenses needed to implement a watershed-wide agreement to provide regional sharing of water diversions of up to 50,000 acre-feet across a watershed shall be \$1,000. If a petitioner files the petition or petitions concurrently with a separate petition for temporary change related to one or more of the same permits or licenses, the fee pursuant to this paragraph shall be waived.

(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 \$5,000 plus \$3.00 per acre-foot of reduced flow, or \$75,000, whichever is less.

(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 \$500.

(5) 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 irrigation use shall be \$750.

(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.

(d) A petition for a temporary urgency change filed under Water Code section 1443.1 that is solely for purposes of diverting water to underground storage for later beneficial use shall be accompanied by, in addition to the fee required by subdivision (a) of this section, a fee for the California Department of Fish and Wildlife review of the petition as follows:

(1) For a petition to divert less than 10,000 acre-feet of water per year, \$3,000 plus \$0.10 per acre-foot of water applied for; or

(2) For a petition to divert 10,000 acre-feet of water per year or more, \$5,000 plus \$0.10 per acre-foot of water applied for.

Authority: Sections 1058 and 1530, Water Code.

Reference: Sections 386, 1228.7, 1525 and 1535, Water Code.

23 CCR § 1066

§ 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 \$300. 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 ~~\$0.099~~ \$0.106 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.

(3) The annual fee shall be 75 percent of the fee calculated pursuant to subdivision (a) based on the face value of the permit or license, or a minimum fee of \$300 plus ~~\$0.099~~ \$0.106 for every acre-foot in excess of 10 acre-feet actually diverted, whichever is greater, for permits or licenses issued on or after January 1, 2020 that meet the following criteria:

(A) The permit or license meets the criteria for the reduced application fee under section 1062, subdivision (a)(1)(F); and

(B) The right holder has installed and is maintaining a stream gage with telemetry capabilities to provide publicly available real-time streamflow conditions via the California Data Exchange Center website.

(4) The reduced annual fee available pursuant to subdivision (a)(3) of this section shall not apply if the right holder does not timely submit the progress report by the permittee required by section 925 or the report of licensee required by section 929.

(5) The reduced annual fee available pursuant to subdivision (a)(3) of this section shall be calculated based on timely reported diversions for the preceding reporting year, provided that the annual fee for the year in which a permit is issued shall be 75 percent of the fee calculated pursuant to subdivision (a) based on the face value of the permit or license.

(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: Sections 1058 and 1530, Water Code.

Reference: Sections 1525, 1536 and 1537, Water Code.

23 CCR § 3833.1

§ 3833.1. Annual Fees for FERC Licensed Hydroelectric Projects.

- (a) Each applicant seeking water quality certification for an activity that includes, or involves construction or modification of facilities for the purpose of, producing hydroelectric power, where the activity or facilities require the issuance or amendment of a FERC license, shall pay an annual fee in accordance with this section.
- (b)(1) An annual fee calculated pursuant to paragraphs (4) and (5) shall apply in each fiscal year (July 1 through June 30) during or after the year in which review in anticipation of consideration of certification is initiated as specified in paragraph (2) and until and including the fiscal year in which certification and related federal proceedings are complete as specified in paragraph (3).
- (2) Review in anticipation of consideration of certification shall be deemed to have been initiated when any of the following occurs or has occurred:
- (A) A notice of intent is filed pursuant to 18 CFR § 5.5 or 18 CFR § 16.6.
 - (B) Consultation is initiated pursuant to 18 CFR § 4.38.
 - (C) An application for water quality certification is filed.
- (3) Certification and related proceedings shall be deemed to have been completed when any of the following occurs:
- (A) FERC issues or denies the license or license amendment for which review in anticipation of consideration of certification was initiated.
 - (B) FERC determines that no license, other than a license already in effect, or license amendment is required.
 - (C) The applicant abandons the proposed activity, including withdrawal or surrender of any applicable notification of intent, FERC preliminary permit, FERC license application, or other application for FERC approval.
- (4) The annual fee shall be \$1,000 plus ~~\$0.669~~ \$0.717 per kilowatt, based on the authorized or proposed installed generating capacity of the hydroelectric facility.
- (A) In the case of an application for an original, new or subsequent license, as those terms are used in Parts 4, 5 and 16 of Title 18 of the CFR, the annual fee shall be based on the installed generating capacity of the facility as proposed in the notification of intent, application for FERC license, application for certification, or existing license that is proposed for takeover or relicensing, whichever is greatest.
 - (B) In the case of a proposed amendment to an existing FERC license, the component of the fee based on installed generating capacity shall be based on the amount by which the installed generating capacity of the hydroelectric facility would be increased by the proposed amendment.
- (5) If an applicant for certification has paid any deposit pursuant to subdivision (b) of section 3833 as that subdivision was in effect before January 1, 2004, the state board shall credit against the annual fee specified in paragraph (4) any

portion of that deposit that was for costs incurred after June 30, 2003. If an applicant for certification was required to pay but did not pay any deposit pursuant to subdivision (b) of section 3833 as that subdivision was in effect before January 1, 2004, the annual fee shall include any unpaid deposit, less any portion of that unpaid deposit that was for costs incurred after June 30, 2003, in addition to the annual fee specified in paragraph (4).

(6) If an application for certification is filed for an activity for which no annual fees have previously been imposed, the annual fee shall be due upon filing of the application for certification, and shall be paid to the state board. In all other cases, the annual fee shall become due thirty days after the State Board of Equalization gives notice of the fee, and shall be paid to the State Board of Equalization.

(c)(1) The holder of any FERC license for a hydroelectric project for which water quality certification has been issued shall pay an annual fee in the amount of \$100 plus ~~\$0.329~~ \$0.353 per kilowatt, based on the authorized installed generating capacity of the hydroelectric project.

(2) The fee imposed under this subdivision shall not apply in the fiscal year when the FERC license is issued if an annual fee is imposed in that fiscal year pursuant to subdivision (b).

(3) The annual fee imposed under this subdivision shall be due thirty days after the State Board of Equalization gives notice of the fee, and shall be paid to the State Board of Equalization.

(d)(1) A determination by the state board that an applicant is required to pay a fee under this section or paragraph (1) of subdivision (b) of section 3833, and any determination by the state board regarding the amount of that fee, is subject to review under chapter 4 (commencing with Section 1120) of part 1 of division 2 of the Water Code. Any petition by an applicant to the state board for review shall be submitted in accordance with that chapter and article 12 (commencing with section 768) of chapter 2 of division 3 of this title.

(2) If the subject of a petition for reconsideration relates to an annual fee, other than an annual fee first required to be paid pursuant to paragraph (1) of subdivision (b) of section 3833, the board's decision regarding an annual fee shall be deemed adopted on the date of assessment by the State Board of Equalization. The petition must be received by the board within 30 days of the date of assessment by the State Board of Equalization.

Authority: Section 13160.1, Water Code.

Reference: Section 13160.1, Water Code.