NOTICE OF PROPOSED EMERGENCY RULEMAKING

Water Rights Fees for Fiscal Year 2026-27

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, 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 submission of the proposed emergency to the Office of Administrative Law, the Office of Administrative Law shall 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, 1529.5, 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 15, 2026, the State Water Board adopted emergency regulations amending water rights fee schedules in sections 1040, 1044, 1063, 1064 and 1066, and adding section 1040.5, to title 23 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, 1529.5, 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, and critical work pursuant to the Sustainable Groundwater Management Act (SGMA), would be in danger of being shut down. Continued administration of these programs is essential to the economy and environment of the State of California. Without funding for the programs, 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 and SGMA programs also are 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, 1529.5, 1530, 5107, 5208 and 10736 provide authority for the emergency regulation. The emergency regulation implements, interprets, or makes specific Water Code sections 386, 1228.7, 1525, 1528, 1529.5, 1530, 1535, 1536, 1537, 1551, 1552, 5202, 10735.2. 10735.4, 10735.6, and 10736; and Health and Safety Code section 116275.

Water Code section 1530 provides deemed emergency regulation authority for the sections adopted or amended as part of this rulemaking, stating "[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, registrations, 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 schedules in FY 2026-27 to: (1) increase water right application, permit and license fees to conform to amounts appropriated by the Legislature from the WRF, (2) adjust the fee cap on change petitions involving transfers based on the California consumer price index, (3) revise the timing of the SGMA automatic late fee to align with future reporting periods automatically and work with the Board's flexibility to modify reporting periods, and to ensure late fees are applied as intended, and (4) assess a new SGMA fee to recover staff costs associated with the review of requests for exclusion from probationary requirements.

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.

Fiscal Impact (Gov. Code, § 11346.5, subd. (a)(6))
Under the proposed emergency regulation's increase in 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 holds water rights for projects associated with the State Water Project for which the increased cost will be approximately $89,609 for FY 2026-27. All other state agencies with water rights will incur a total increased cost for FY 2026-27 of approximately $788 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.

Under the proposed emergency regulations, there will be an increase in the caps for 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 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 petition filing fees.

There is no cost to any local agency or school district for which reimbursement is required or other non-discretionary cost or savings imposed on local agencies.

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 $20 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 February 1~~on or before the due date, 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 ~~February 1~~ the due date 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). Reports shall be due on February 1 each year unless the Board sets an alternative date, in which case reports shall be due on that alternative date. Automatic late reporting fees do not apply to reports due May 1, 2026 until February 1, 2027.

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

Reference: Sections 5202, 5202(a)(1), 5202(a)(2), 10735.2(c), 10735.4(c) and 10735.6(b), Water Code.

23 CCR § 1040.5

§ 1040.5. Exclusion Request Fees.

(a) Requests for exclusion pursuant to Water Code section 10735.2, subdivision (c) or (e) shall be accompanied by a fee as follows:
    (1) If the total groundwater use covered by the request for exclusion is less than five percent of the total groundwater pumping in the subbasin, a fee of $50,000.
    (2) If the total groundwater use covered by the request for exclusion is five percent or more, but less than 10 percent of the total groundwater pumping in the subbasin, a fee of $125,000.
    (3) If the total groundwater use covered by the request for exclusion is ten percent or more, but less than 20 percent of the total groundwater pumping in the subbasin, a fee of $200,000.
    (4) If the total groundwater use covered by the request for exclusion is twenty percent or greater of the total groundwater pumping in the subbasin, a fee of $250,000.
(b) For each approved Groundwater Sustainability Agency exclusion pursuant to Water Code section 10735.2, subdivision (c), an annual review fee equal to 25 percent of the applicable fee that would be due for a new request pursuant to subdivision (a) shall be paid each year after the year in which the exclusion was approved.

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

Reference: Sections 5202, 5202(a)(1), 5202(a)(2), 10735.2(c) and 10735.2(e), Water Code.

23 CCR § 1044

§ 1044. Administration of Fees.

(a) ~~Annual filing~~ 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 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, public school, or a public water system or state small 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 income-based 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 and 10735.2, 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 $0.1248 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.

(1) Except as provided in subparagraphs (i), (ii), (iii), (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 ~~$695,052~~$716,529.

(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 as follows:

(A) For requests accompanying the filing of an application to appropriate water, an unnoticed application or pending application with active protests, $20,000;

(B) For requests submitted for a pending application that has been noticed with no unresolved protests, $5,000;

(C) For requests submitted for a single pending application that has been noticed with no unresolved protests, seeking release from two or more state-filed applications, $10,000.

(4) The fee for filing an amended registration 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 the same as the fee required by section 1068, subdivision (a) for filing of a registration.

(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 $350. 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 $0.12<u>48</u> 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~~<u>$350</u> plus ~~$0.109~~<u>$0.1248</u> 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.

(c) Notwithstanding subdivisions (a) and (b), an additional processing fee shall be added to the annual fee for any late filing of a report required by section 924, 925 or 929 as follows:

(1) For registrations, certificates, permits and licenses authorizing annual diversion of up to 100 acre-feet, a report that is submitted 31-60 days after the reporting deadline shall be assessed an additional late reporting fee of 20 percent of the applicable annual fee, a report that is submitted 61-90 days after the reporting deadline shall be assessed an additional late reporting fee of 30 percent of the applicable annual fee, and a report that is submitted more than 90 days after the reporting deadline shall be assessed an additional late reporting fee of 45 percent of the applicable annual fee.

(2) For registrations, certificates, permits and licenses authorizing annual diversion of more than 100 acre-feet but not exceeding 1,000 acre-feet, a report that is submitted 31-60 days after the reporting deadline shall be assessed an additional late reporting fee of 30 percent of the applicable annual fee, a report that is submitted 61-90 days after the reporting deadline shall be assessed an additional late reporting fee of 40 percent of the applicable annual fee, and a report that is submitted more than 90 days after the reporting deadline shall be assessed an additional late reporting fee of 55 percent of the applicable annual fee.

(3) For registrations, certificates, permits and licenses authorizing annual diversion of more than 1,000 acre-feet but not exceeding 5,000 acre-feet, a report that is submitted 31-60 days after the reporting deadline shall be assessed an additional late reporting fee of 40 percent of the applicable annual fee, a report that is submitted 61-90 days after the reporting deadline shall be assessed an additional late reporting fee of 50 percent of the applicable annual fee, and a report that is submitted more than 90 days after the reporting deadline shall be assessed an additional late reporting fee of 65 percent of the applicable annual fee.

(4) For registrations, certificates, permits and licenses authorizing annual diversion of more than 5,000 acre-feet but not exceeding 25,000 acre-feet, a report that is submitted 31-60 days after the reporting deadline shall be assessed an additional late reporting fee of 50 percent of the applicable annual fee, a report that is submitted 61-90

days after the reporting deadline shall be assessed an additional late reporting fee of 60 percent of the applicable annual fee, and a report that is submitted more than 90 days after the reporting deadline shall be assessed an additional late reporting fee of 75 percent of the applicable annual fee.

(5) For registrations, certificates, permits and licenses authorizing annual diversion of more than 25,000 acre-feet, a report that is submitted 31-60 days after the reporting deadline shall be assessed an additional late reporting fee of 60 percent of the applicable annual fee, a report that is submitted 61-90 days after the reporting deadline shall be assessed an additional late reporting fee of 70 percent of the applicable annual fee, and a report that is submitted more than 90 days after the reporting deadline shall be assessed an additional late reporting fee of 85 percent of the applicable annual fee.

Authority: Sections 1058 and 1530, Water Code.

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