



Linda S. Adams
Secretary for
Environmental Protection

State Water Resources Control Board



Arnold Schwarzenegger
Governor

Executive Office

Charles R. Hoppin, Board Chair
1001 I Street • Sacramento, California • 95814 • 916.341.5615
P.O. Box 100 • Sacramento, California • 95812-0100
Fax 916.341.5621 • www.waterboards.ca.gov

NOTICE OF PROPOSED EMERGENCY RULEMAKING

Water Right 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, §§ 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 15, 2009, the State Water Board adopted revised emergency water right fee regulations and schedules consistent with the revenue levels set forth in the Budget Act for Fiscal Year (FY) 2009-2010.

Proposed Text of Emergency Regulations

See the attached proposed text of the emergency regulations.

Finding of Emergency (Gov. Code, § 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, §§ 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,

California Environmental Protection Agency

Notice of Proposed Emergency Regulation

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 right 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 right program also is important for the protection of public health. For example, the water right 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, § 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, 1425, 1426 1525, 1529 1535, 1536 1537, and 5006.

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 right 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 right fee regulations and schedules are contained in division 3 of title 23 of the California Code of Regulations.

In general, the emergency regulations would adjust the fee schedule to: (1) Provide a one-time credit on annual permit or license fees to bring revenues in line with anticipated expenditures for FY 2009-10; (2) Reduce the filing fees for the groundwater recordation program to bring revenues in line with anticipated expenditures; (3) Adjust the fee caps on certain filing fees to coincide with the changes in the consumer price index; and (4) Clarify fee language for petitions involving water transfers and petitions for temporary urgency involving water transfers. The water right fee regulations and

Notice of Proposed Emergency Regulation

schedules will be contained in division 3 of title 23 of the California Code of Regulations.

The purpose of the emergency regulations is to revise the water right fee schedules consistent with the Budget Act for Fiscal Year 2009-2010.

There is no comparable federal statute or regulation.

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.

Local Mandate (Gov. Code, § 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, § 11346.5, subd. (a)(6))

Under the proposed emergency regulations for this fiscal year, most local and state agencies will pay less annual fees than last year with due to the one-time credit resulting in an estimated overall reduction of approximately \$1.6 million. 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 15, 2009

Date


Jeanine Townsend
Clerk to the Board
Chief Counsel
for the clerk