

**STATE WATER RESOURCES CONTROL BOARD
PROPOSED EMERGENCY REGULATIONS**

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

Amend the following section:

§ 676. Filing Fees.

An application will not be accepted for initial review or filing unless it is accompanied by the filing fee required by chapter 5 (commencing with section 1061) of this division. If after the initial review of an application described in section 675 the board does not accept the application for filing, the board shall refund the application filing fee, minus the \$250 non-refundable initial review fee. The board may cancel an application for failure to pay any annual fee for the application when due.

Authority: Sections 1058, 1252, and 1530, Water Code.

Reference: Section 1525, Water Code.

Amend the following section:

§ 791. Change Petitions.

- (a) After notice of an application to appropriate water has been given pursuant to Article 3, changes in point of diversion, place of use, or purpose of use as stated in the application, permit, or license may be allowed only upon petition and provided that the petitioner establishes that the proposed change(s) will neither in effect initiate a new right not injure any other legal user of water.
- (b) Upon petition under Water Code Section 1740, the board may approve changes in point of diversion, place of use or purpose of use in a water right determined by a court decree issued pursuant to Water Code Section 2500 et seq. after January 1, 1981. The petitioner shall provide the same factual basis for a temporary, long-term, or permanent change in a water right determined under Water Code Section 2500 et seq. as would be required for a temporary, long-term, or permanent change under a permit or license.
- (c) See Sections 686, 730, and 799 regarding the addition of generation of power as a purpose of use.
- (d) For purposes of Article 15 and 16, "petition" shall be deemed to include the notice or notification provided by the water right holder under Water Code Sections 1726 and 1727.
- (e) The procedures set forth in Articles 15, 16, 16.5 and 17 shall be followed as nearly as possible when filing and processing petitions for changes in permits or licenses other than changes in point of diversion, place of use, and purpose of use.
- (f) A petition will not be accepted for initial review or filing unless it is accompanied by the filing fee required by chapter 5 (commencing with section 1061) of this division. If after the initial review of a petition described in this section the board does not accept the petition for filing, the board shall refund the petition filing fee, minus the \$250 non-refundable initial review fee.
- (g) The board may cancel a petition for failure to pay any annual fee for the petition when due.

Authority: Sections 1058 and 1530, Water Code.

Reference: Sections 1525, 1701, 1702, 1725, 1726, 1727, 1735 and 1740, Water Code.

§ 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) The fee for a water right application shall be the greater of either \$1,000, plus \$15 for each acre-foot that the applicant seeks to divert in excess of 10 acre-feet or \$10 per acre-foot based on the total annual amount of diversion sought by the application. The total fee shall not exceed \$400,000, plus any additional fee due pursuant to subparagraphs (2) and (3).

(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~~the effective date of this section~~, shall pay a supplemental filing fee equal to the difference between the filing fee already paid and the amount due pursuant to ~~subdivision (a)~~the regulation in effect on January 1, 2004.

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

Authority: Sections 1058 and 1530, Water Code.

Reference: Sections 1525 and 1535, Water Code.

§ 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 as follows:

(1) Except as provided in subparagraphs (A), (B), and (C), the fee for a petition to change the ~~place of use, purpose of use, or point of diversion~~ terms of an application, permit or license shall be \$1,000, except 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 \$5,000.

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

(B) The fee for a change petition involving a transfer of water pursuant to Water Code section 382, 1701, 1725, or 1735 shall be \$2,000, plus \$0.30 per 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 \$400,000.

~~(2)(C)~~ The fee for a petition for extension of time shall be \$1,000.

~~(3) The fee for a petition to change the conditions of a permit or license, which is not otherwise subject to subdivision (a)(1) or (a)(2), shall be \$1,000.~~

~~(4)(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.

~~(5)(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.

(b) A person who filed a petition or a request for release from priority on or after July 1, 2003, and prior to ~~the effective date of this section~~ 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~~subdivision (a)~~.

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

Authority: Sections 1058 and 1530, Water Code.

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

§ 1066. Annual Fees for Permits or Licenses.

(a) A person who holds a water right permit or license shall pay ~~an~~ minimum annual fee ~~that is the greater of \$100 or \$0.03 per acre-foot based on~~ 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 \$0.025 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 ~~use~~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 ~~use~~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.

§ 1067. Water Leases.

(a) A person who files an application for approval of a water lease agreement pursuant to Water Code section 1025.5 shall pay to the board a filing fee equal to an amount calculated in accordance with the fee schedule in section 1062 of this chapter, except that the fee shall be based on the amount of water proposed to be leased over the entire term of the lease instead of the amount proposed to be diverted per year, and the fee shall not be subject to a \$400,000 limit. The filing fee shall constitute all annual fees for the term of the lease.

(b) A person who provides notice of a water lease to the board shall pay to the State Board of Equalization an annual fee determined by the board pursuant to this subdivision.

(1) When a water district submits a notice to the board under Water Code section 1025, the water district shall include in the notice sufficient information for the board to determine the maximum amount of water to be leased for each year the lease will be in effect. The board shall determine the annual fees for the lease in an amount equal to the fee set forth in section 1062 of this chapter for the first year of the lease, and the fee set forth in section 1062 for each additional year the lease agreement is in effect, except that the fee for each year shall not be subject to a \$400,000 limit. In applying section 1062 to calculate the amount of the fee for the lease, the board shall calculate a separate annual fee for each year based on the amount of water proposed to be leased each year instead of calculating the fee based on the amount of water proposed to be diverted per year.

(2) The water district shall notify the board that it has approved a lease agreement, and shall provide the board a copy of the notice of determination submitted in compliance with the California Environmental Quality Act (commencing with section 21000 of the Public Resources Code), within ten days after the water district approves the lease agreement.

(3) The water lease shall not take effect until the first annual fee is paid, and the water lease shall not continue in effect in any subsequent year unless the annual fee for that year is paid.

(c) The board may collect additional fees to cover its costs of compliance with Water Code sections 1026 and 1029.

Authority: Sections 1058 and 1530, Water Code.

Reference: Sections 1025, 1025.5, 1031, and 1525, Water Code.

§ 1074. Administration of Fees and Expenses.

(a) Annual fees shall be imposed based on the fiscal year (July 1 through June 30). ~~Expenses and unpaid fees shall be imposed based on the time period specified by the board. Annual fees shall be based on the regulations in effect at the time of assessment. Except as otherwise provided in section 1062, subdivision (b) and section 1064, subdivision (b), filing fees shall be based on the regulations in effect at the time of filing.~~ All references in this chapter to the beginning of the year or to circumstances occurring during the year shall be construed to refer to the fiscal year.

(b) ~~Except as provided in this subdivision, if~~ the circumstances establishing a requirement for payment of an annual fee occur during a year, the entire annual fee shall be imposed for that year, even if those circumstances occur for only a portion of the year. ~~The board may decide not to assess an annual fee if a permittee or licensee requests revocation of the permit or license before the annual fee is assessed and the board determines that revocation likely would be appropriate.~~

(c) ~~If a change in the identity of the fee payer changes before an assessment is issued, the previous fee payer remains reported to the board before the assessment is due, then the new fee payer is responsible for payment of the assessment, unless the fee payer notifies the board of the name and address of the new fee payer at least 10 days before the assessment is issued. The notice must comply with section 831 of this division, if applicable for the year.~~

(d) An annual fee shall be due and payable thirty days after the State Board of Equalization issues an assessment.

(e) Expenses and unpaid fees are due on the date that they should have been paid to the board.

(f) Whenever, while acting within the scope of its authority under chapter 8 (commencing with section 1525), part 2, division 2 of the Water Code, the board notifies the State Board of Equalization of an assessment, decision on a petition for reconsideration, decision on a claim for refund, cancellation, or adjustment, the State Board of Equalization shall, without further review, collect, refund, cancel or adjust the assessment or other amount in accordance with the instructions of the board. ~~The requirements of chapter 5 (commencing with section 55221) of the Revenue and Taxation Code shall not apply to claims for refund, credits, adjustments, or cancellations decided by the board; provided, however, that interest shall be computed, allowed and paid on any amount to be refunded in the manner specified in Revenue and Taxation Code section 55225.~~

(g) If a fee payer files a petition for reconsideration of an assessment with the board pursuant to section 1077 or section 1078 of this chapter, then the fee payer may either (i) timely pay the assessment to the State Board of Equalization and include a ~~claim request~~ for refund in the petition for reconsideration filed with the board or (ii) postpone payment of the assessment while the petition for reconsideration is pending.

(1) If payment of the assessment is postponed until the board decides the petition for reconsideration, interest will continue to accrue from the date the assessment was initially due at the rate specified in Revenue and Taxation Code section 55042.

(2) The board shall promptly notify the State Board of Equalization of its decision on a petition for reconsideration.

(3) Any amount to be refunded or cancelled shall be credited by the State Board of Equalization on any amounts then due from the person from whom the amount to be refunded or cancelled was collected or by whom it was paid, and the balance shall be refunded to the person, or his or her successors, administrator, or executors.

(h) If the board denies the petition for reconsideration in whole or in part, then the assessment shall become final for purposes of the Fee Collection Procedures Law, part 30 (commencing with section 55001) of division 2 of the Revenue and Taxation Code, thirty days after the State Board of Equalization issues a reassessment implementing the board's decision. Interest shall be due from the date that the assessment was originally due and penalties shall accrue commencing on the date that the reassessment becomes final for purposes of the Fee Collection Procedures Law. This paragraph does not affect the deadline for filing a petition for writ of mandate under section 1126 of the Water Code. For purposes of section 1126 of the Water Code, the board's order or decision on a petition for reconsideration is final on the date that the board issues the order or decision.

(i) Thirty-one days following the date of assessment or reassessment by the State Board of Equalization, amounts assessed by the State Board of Equalization that were not the subject of a timely petition for reconsideration by the board, and amounts that were the subject of a timely petition for reconsideration that have been decided by the board to be owing, shall be treated as final liabilities under the Fee Collection Procedures Law.

(j) A person may not maintain a suit in any court for the recovery of a fee assessed by the State Board of Equalization unless the person has filed a petition for reconsideration in accordance with this chapter and has either paid the fee in accordance with subdivision (d) or pays the fee within 30 days of the issuance of a reassessment of the fee pursuant to subdivision (h). The petition and payment of the fee in accordance with this subdivision constitute a claim for refund within the meaning of section 55242 of the Revenue and Taxation Code.

Authority: Sections 1058 and 1530, Water Code.

Reference: California Constitution, Article XIII, Section 32 and Sections 1525, 1535, 1536, and 1537, Water Code.

§ 1077. Petition for Reconsideration.

(a) The board's determination that a person is required to pay a fee, or determination regarding the amount of the fee, shall be subject to reconsideration under chapter 4 (commencing with Section 1120) of part 1 of division 2 of the Water Code. Any petition ~~by an aggrieved person to the board~~ for reconsideration shall be submitted by the fee payer in accordance with that chapter and article 12 (commencing with section 768) of chapter 2 of division 3 of this title. The petition also shall specify why the petitioner believes that no fee is due or how the petitioner believes that the amount of the fee has been miscalculated. A petition for reconsideration of a fee assessed by the State Board of Equalization must include a copy of the notice of assessment.

(b) If the subject of a petition for reconsideration relates to an assessment by the State Board of Equalization, the board's decision regarding an annual fee shall be deemed adopted on the date of assessment by the State Board of Equalization. A petition for reconsideration is timely filed only if the board or State Board of Equalization receives ~~at the~~ the petition ~~for reconsideration~~ within 30 days of the date the assessment is issued, ~~the petition will be deemed timely received by the board.~~

(c) The State Board of Equalization shall not accept a petition for reconsideration of the board's determination that a person is required to pay a fee, or the amount of the fee. If the State Board of Equalization receives any petition for reconsideration, it shall promptly forward the petition to the board.

Authority: Sections 1058 and 1530, Water Code.
Reference: Sections 1120 and ~~4525~~1537, Water Code.

Add the following section:

§ 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 § 5.6 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 voluntary surrender of any applicable notification of intent, FERC preliminary permit, FERC license application or FERC license.

(4) The annual fee shall be ~~\$500~~\$1,000 plus ~~\$ 0.085~~\$0.15 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 ~~\$10~~\$100 plus ~~\$0.01~~\$0.015 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.