

State Water Resources Control Board

NOTICE OF PROPOSED EMERGENCY RULEMAKING

Water Rights Fees for Fiscal Year 2025-26

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 action 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 16, 2025, the State Water Board adopted emergency regulations amending water rights fee schedules in title 23, sections 1061, 1062, 1064, 1074, 1075 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 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. 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 program is also important for the protection of public health, applying and enforcing 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 and 13160.1 provide authority for the emergency regulation. The emergency regulation implements, interprets, or makes specific 26 U.S.C. Section 169, 40 CFR Section 20; 33 U.S.C. Section 1341; Water Code sections 19, 25, 348, 386, 1228.3, 1228.5, 1228.7, 1425, 1426, 1525, 1528, 1530, 1535, 1536, 1537, 1551, 1552, 13050(c), 13160 and 13160.1.

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 2025-26 to: (1) clarify how fees are imposed for requests, submitted prior to a permit being issued, to split into separate permits applications requesting authorization to divert 40,000 acre feet or more per year, (2) adjust the fee cap on change petitions involving transfers based on the California consumer price index, (3) update existing references to the Board of Equalization to the California Department of Tax and Fee Administration, and (4) temporarily suspend water quality certification fees during the Federal Energy Regulatory Commission (FERC) pre-licensing phase when a Notice of Intent (NOI) has triggered fees but a draft or final license application is not submitted within five years of the NOI.

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 changes, there will be no change in annual permit and license fees for most local and state agencies.

Under the proposed emergency regulations, there will be an increase in the cap 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 transfer 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 cap 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 § 1061
§ 1061. Definition.

(a) "Annual fee" means a fee for the twelve-month fiscal year beginning July 1 and ending June 30, that is described in sections 1063, 1065, 1066, 1067, and 3833.1 of this title, and that the ~~State Board of Equalization~~ California Department of Tax and Fee Administration is required to collect pursuant to Water Code section 1537.

(b) "Assessment" means an amount owing as included in a notice of determination or similar billing document issued by the ~~State Board of Equalization~~ California Department of Tax and Fee Administration to a person identified by the board as owing an annual fee, unpaid fee, or expense.

(c) "Board" means the State Water Resources Control Board.

(d) "Fee payer" means any person liable for the payment of fees or expenses collected pursuant to this chapter.

(e) "Person" means a person, individual, trust, joint stock company, business concern, firm, association, organization, partnership, business trust, corporation, limited liability company, company, or entity or organization capable of holding an interest in real property in California. "Person" also includes a city, county, city and county, district, commission, the state or any department, agency, or political subdivision thereof, interstate body, and the United States, to the extent authorized by federal law.

(f) "Unpaid fee" means any fee provided for under this chapter or chapter 28 of this title that was not timely paid to the board and that the ~~State Board of Equalization~~ California Department of Tax and Fee Administration is required to collect pursuant to Water Code section 1537.

Authority: Sections 1058 and 1530, Water Code.

Reference: Sections 19, 25, 1252.5, 1525, 1536, 1537 and 13050(c), 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 (J), the fee for a water right application shall be as follows:
- (i) For applications requesting authorization to divert less than 10 acre-feet per year, \$5,000;
 - (ii) For applications requesting authorization to divert 10 acre-feet or more per year but less than 200 acre-feet per year, \$40,000;
 - (iii) For applications requesting authorization to divert 200 acre-feet or more per year but less than 1,000 acre-feet per year, \$43,000;
 - (iv) For applications requesting authorization to divert 1,000 acre-feet or more per year but less than 5,000 acre-feet per year, \$55,000;
 - (v) For applications requesting authorization to divert 5,000 acre-feet or more per year but less than 10,000 acre-feet per year, \$117,000;
 - (vi) For applications requesting authorization to divert 10,000 acre-feet or more per year but less than 15,000 acre-feet per year, \$192,000;
 - (vii) For applications requesting authorization to divert 15,000 acre-feet or more per year but less than 20,000 acre-feet per year, \$266,000;
 - (viii) For applications requesting authorization to divert 20,000 acre-feet or more per year but less than 25,000 acre-feet per year, \$341,000;
 - (ix) For applications requesting authorization to divert 25,000 acre-feet or more per year but less than 30,000 acre-feet per year, \$415,000;
 - (x) For applications requesting authorization to divert 30,000 acre-feet or more per year but less than 35,000 acre-feet per year, \$489,000;
 - (xi) For applications requesting authorization to divert 35,000 acre-feet or more per year but less than 40,000 acre-feet per year, \$564,000;
 - (xii) For applications requesting authorization to divert 40,000 acre-feet or more per year but less than 200,000 acre-feet per year, \$649,000;
 - (xiii) For applications requesting authorization to divert 200,000 acre-feet or more per year, \$811,000.

(B) In addition to the fees identified in subparagraph (A), a complexity

surcharge of 20 percent of the application fee shall be added for:

(i) Applications proposing to divert from a location(s) within the watershed of the Sacramento-San Joaquin Bay Delta;

(ii) Applications proposing to divert by means of an onstream dam(s) located within the geographic area covered by the Policy for Maintaining Instream Flows in Northern California Coastal Streams.

(C) If, after an application requesting authorization to divert 40,000 acre-feet or more per year has been filed but before a permit has been issued, an applicant requests splitting the application into separate applications, the request shall be accompanied by the total application fee pursuant to section 1062(a)(1) for all separate applications generated by the proposed split ~~less except for the amount of the original application fee that was paid~~ largest separate application, which shall be considered the original application for which fees have already been paid.

(D) At a small hydroelectric generating facility meeting 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 application fee shall be the fee identified in subparagraph (A)(i) for projects to divert below 10 acre-feet per year, as modified pursuant to subparagraph (B) if applicable, and the fee identified in subparagraph (A)(ii) for projects to divert 10 acre-feet per year or more, as modified pursuant to subparagraph (B) if applicable.

(E) The fee for an application for a temporary permit filed under Water Code section 1425, other than a permit described in subparagraph (F) or (G) of this subdivision, shall be 50 percent of the fee calculated under subparagraph (A), as modified pursuant to subparagraph (B) if applicable.

(F) 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 50 percent of the fee identified in subparagraph (A)(i) for projects to divert below 10 acre-feet per year, as modified pursuant to subparagraph (B) if applicable, and 50 percent of the fee identified in subparagraph (A)(ii) for projects to divert 10 acre-feet per year or more, as modified pursuant to subparagraph (B) if applicable. The filing fee includes the annual permit fee if a temporary permit is issued.

(G) 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 15

percent of the fee identified in subparagraph (A), as modified pursuant to subparagraph (B) if applicable, for applications submitted at least 120 days prior the date requested for commencement of diversion, and 25 percent of the fee identified in subparagraph (A), as modified pursuant to subparagraph (B) if applicable, for applications submitted less than 120 days prior the date requested for commencement of diversion.

(H) 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 subparagraphs (A), (G), and (I), as modified pursuant to subparagraph (B) if applicable. 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. Notwithstanding subparagraph (i), an application proposing diversion 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 is not limited to diversion of water only between December 1 and March 31 in order to be eligible for this reduced fee.

(I) 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 15 percent of the fee identified in subparagraph (A), as modified pursuant to subparagraph (B) if applicable, for applications submitted at least 120 days prior the date

requested for commencement of diversion, and 25 percent of the fee identified in subparagraph (A), as modified pursuant to subparagraph (B) if applicable, for applications submitted less than 120 days prior the date requested for commencement of diversion.

(J) An applicant for a temporary permit filed under Water Code section 1433.1 shall also pay, in addition to the fee required by subparagraph (I) 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 \$100,000 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 \$20,000 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 § 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.

(i) 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 ~~\$674,481~~\$695,052.

(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:

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

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

~~(iii)~~(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 § 1074
§ 1074. Administration of Fees and Expenses.

(a) Annual fees shall be imposed based on the fiscal year (July 1 through June 30). 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 the identity of a fee payer changes before an assessment is issued, the previous fee payer remains 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.

(d) An annual fee shall be due and payable thirty days after the ~~State Board of Equalization~~ California Department of Tax and Fee Administration 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~~ California Department of Tax and Fee Administration of an assessment, decision on a petition for reconsideration, decision on a claim for refund, cancellation, or adjustment, the ~~State Board of Equalization~~ California Department of Tax and Fee Administration shall, without further review, collect, refund, cancel or adjust the assessment or other amount in accordance with the instructions of the board.

(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~~ California Department of Tax and Fee Administration and include a 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~~ California Department of Tax and Fee Administration 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~~ California Department of Tax and Fee Administration 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~~ California Department of Tax and Fee Administration 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~~ California Department of Tax and Fee Administration, amounts assessed by the ~~State Board of Equalization~~ California Department of Tax and Fee Administration 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~~ California Department of Tax and Fee Administration 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.

23 CCR § 1075
§ 1075. Collection of Fees and Expenses.

- (a) ~~The State Board of Equalization~~ California Department of Tax and Fee Administration shall collect the annual fees established under sections 1063, 1065, 1066, 1067, and 3833.1 of this division, and any unpaid fees or expenses that the board refers to the ~~State Board of Equalization~~ California Department of Tax and Fee Administration for collection. The expenses that the ~~State Board of Equalization~~ California Department of Tax and Fee Administration is required to collect pursuant to Water Code section 1537 shall be considered fees for purposes of the Fee Collection Procedures Law, part 30 (commencing with section 55001) of division 2 of the Revenue and Taxation Code. On referral by the board, a person owing a fee or expense that must be collected by the ~~State Board of Equalization~~ California Department of Tax and Fee Administration is deemed to have registered with the ~~State Board of Equalization~~ California Department of Tax and Fee Administration for purposes of the Fee Collection Procedures Law and entry into the ~~State Board of Equalization~~ California Department of Tax and Fee Administration registration system.
- (b) The board may request from a fee payer any additional information necessary for the board to determine the appropriate fee or expense or for the ~~State Board of Equalization~~ California Department of Tax and Fee Administration to collect the fee or expense pursuant to the Fee Collection Procedures Law.
- (c) For purposes of collection, the board shall provide the ~~State Board of Equalization~~ California Department of Tax and Fee Administration with the name and address of the fee payer or the fee payer's authorized representative. The board may designate the person from whom the ~~State Board of Equalization~~ California Department of Tax and Fee Administration shall collect the fee. The ~~State Board of Equalization~~ California Department of Tax and Fee Administration's issuance of an assessment to a fee payer's authorized representative shall be deemed to be notice to each fee payer.
- (d) ~~The State Board of Equalization~~ California Department of Tax and Fee Administration may rely on the fee payer information provided by the board until the board notifies the ~~State Board of Equalization~~ California Department of Tax and Fee Administration of a change in the fee payer's information. A fee payer shall promptly notify the board of any changes or corrections to the fee payer's identifying information. The board shall promptly notify the ~~State Board of Equalization~~ California Department of Tax and Fee Administration of changes or corrections to the identifying information.

Authority cited: Sections 1058 and 1530, Water Code.

Reference: Sections 1525, 1535, 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), except as provided in paragraph (7).

(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 \$0.717 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~~ California Department of Tax and Fee Administration gives notice of the fee, and shall be paid to the ~~State Board of Equalization~~ California Department of Tax and Fee Administration.

(7) For projects where review in anticipation of consideration of certification is deemed to have been initiated pursuant to paragraph (2)(A), fees pursuant to subdivision (b) shall be paused after five (5) years, if there are no active additional information requests during that period, until a draft or final license application for the project is filed with FERC or an additional information request is issued. Once a draft or final license application for the project is filed with FERC or an additional information request is issued, annual fees for the project shall resume.

(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 \$0.353 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~~ California Department of Tax and Fee Administration gives notice of the fee, and shall be paid to the ~~State Board of Equalization~~ California Department of Tax and Fee Administration.

(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~~ California Department of Tax and Fee Administration. The petition must be received by the board within 30 days of the date of assessment by the ~~State Board of Equalization~~ California Department of Tax and Fee Administration.

Authority: Section 13160.1, Water Code.

Reference: Section 13160.1, Water Code.