

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:

§ 655. Application.

“Application” means the form entitled “Application to Appropriate Water,” the “Environmental Information Form,” applicable fees, and the maps required by this subchapter. “Application” includes the form entitled “Supplement to Application” when:

(a) The purpose of use is municipal, industrial, mining, power, temperature control or any other use that is not listed in paragraph 5 of the application; or

(b) The applicant applies to store 25 acre-feet or more of water. These forms are provided by the board.

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

Reference: Sections 1260, ~~and 1375~~, and 1525, Water Code; and Sections 21080, 21080.1 and 21160, Public Resources Code.

Amend the following section:

§ 656. Complete and Incomplete Applications.

(a) Complete Application. An application shall be considered complete when the board has certified, in writing, that the applicant has fully and completely disclosed all information required in the “application” according to instructions set forth in the form and this subchapter, and has paid the applicable fees.

(b) Incomplete Application. An incomplete application is one that is substantially complete except that it fails in some manner to fully conform to the law or the regulations of the board. It includes an application determined to be incomplete pursuant to Sections 65920 et seq. of the Government Code and an application determined to be defective pursuant to Section 1270 of the Water Code. See Section 675 regarding substantial compliance.

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

Reference: Sections 1270 and 1525, Water Code; and Sections 65940, 65941 and 65943, Government Code.

Amend the following section:

§ 676. Filing Fees.

An application will not be accepted for filing unless it is accompanied by the minimum filing fee required by chapter 5 (commencing with section 1061) of this division law. The board may cancel an application for failure to pay any annual fee for the application when due.

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

Reference: Section 1525, Water Code.

Repeal section 677.

~~§ 677. Application Fees for Small Hydroelectric Projects.~~

~~For all applications which propose, as a primary purpose, the development of small hydroelectric energy facilities as defined in Water Code Section 1250.5, an application fee covering the costs of the board and the Department of Fish and Game for evaluating and processing the application shall be charged as follows:~~

~~(a) An initial deposit of \$1,000.00.~~

~~(b) For the initial deposit, the board shall give notice to the applicant in the manner specified by Water Code Section 1527.~~

~~(c) When the costs incurred for evaluating and processing the application reach seventy-five percent (75%) of the initial deposit, a second deposit amounting to the balance of one-half of the estimated total reasonable cost as set forth in Schedule 1 shall be charged.~~

~~(d) At any time the costs incurred reach one hundred percent (100%) of an applicant's first deposit plus seventy-five percent (75%) of the applicant's second or later deposits, the board may require an additional deposit to cover estimated costs of completion as determined at that time.~~

~~(e) For subsequent deposits, after the first deposit, the board shall give thirty days notice by registered mail of the further amount of fee due. If this amount is not received within thirty days of the mailing by the board the application may be cancelled without further notice.~~

~~(f) After action by the board on the application—and, if a permit is to be issued, before it is issued—a final payment shall be made so that the total fee paid by the applicant equals but does not exceed the reasonable costs of the board and the Department of Fish and Game. If the deposit exceeds the cost, the excess shall be refunded.~~

~~The board shall notify the applicant by registered mail if a final payment on the application fee is owed. If the final payment on the application fee is not received by the board within 30 days after the notice has been mailed, the application may be cancelled without further notice.~~

~~(g) The fee provided for in this section shall be in lieu of all other fees prescribed for water right applications through permit issuance; except, that costs, if any, associated with preparation of environmental documents pursuant to the California Environmental Quality Act (CEQA) shall be separately charged.~~

Authority: Section 1058, Water Code.

Reference: Section 1525.5, Water Code.

SCHEDULE 1
SMALL HYDROELECTRIC APPLICATION PROCESSING

COST ESTIMATES

Maximum Theoretical Generating Capacity (MW)	Cost Estimates* One-half Estimated Total Reasonable Cost
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5.0 MW or less at \$6,400/MW	\$ 1,650 to \$16,000
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Greater than 5.0 MW up to and including 30 MW	\$16,000
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*Does not include the costs of preparation of an environmental report should one be required.

Amend the following section:

§ 736. Petitions for Assignment or Release from Priority of Applications Filed Pursuant to Part 2, of Division 6, Sections 10500 et seq. of the Water Code.

(a) Petitions for assignment or release from priority of an application filed pursuant to Section 10500 of the Water Code need not be in any particular form.

(b) Petitions for assignment must be submitted in duplicate and, if the application is not complete, must include a proposed completed application which complies with the requirements set forth in Articles 1 through 7 and Article 10 of this subchapter, to the extent each is applicable.

(c) A Petitions for assignment or release from priority will not be accepted for filing unless must be it is accompanied by the minimum filing fee required by Water Code Section 1548 or 1549 chapter 5 (commencing with section 1061) of this division.

(d) If the proposed completed application fails to conform with legal requirements, it will be returned to the petitioner with a statement of the defects.

Authority: Sections 1058 and 1530, Water Code.

Reference: Sections 1252, 1260, 1525, 1548, 1549, 19594 and 10504.1, 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 nor 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. ~~The fee required by Water Code Section 1547 or 1547.1 must be submitted before a petition for change will be accepted for filing.~~

(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 filing unless it is accompanied by the filing fee required by chapter 5 (commencing with section 1061) of this division. 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, ~~1547, 1547.1~~, 1701, 1702, 1725, 1726, 1727, 1735 and 1740, Water Code.

Amend the following section:

§ 793. Filing Fee When Multiple Changes or Rights Involved.

With respect to a single application, permit, license, or other water right upon which a change petition is filed, a petition or petitions for more than one change shall be considered a single petition insofar as the filing fee is concerned, provided the changes are of such nature that action on them can be taken simultaneously. A petition involving changes to more than one application, permit or license or other water right upon which a change petition is filed shall be deemed a separate petition for each and applicable fees will be required for each. ~~Fees based on water quantity shall be calculated using the quantity of water or water rights subject to the petition.~~

Authority: Sections 1058 and 1530, Water Code.

Reference: Sections 1436, ~~and 1525, 1526, 1547 and 1547.1~~, Water Code.

Amend the following section:

§ 812. Petition for Long-term Transfer.

A petition for a long-term transfer of water or water rights will not be accepted for filing unless it is accompanied by the filing fee required by chapter 5 (commencing with section 1061) of this division until the fee required by Water Code Section 1547.1 and the information and maps specified in Section 794 have been submitted to the board. 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, ~~1547.1~~, 1735, 1736 and 1740, Water Code.

Amend the following section:

§ 842. Requests for Extension of Time Under Permits.

A request for extension of time within which to commence or complete construction work or apply the water to full beneficial use may be submitted upon forms supplied by the board. A request for extension of time will not be accepted for filing unless it is accompanied by the filing fee required by chapter 5 (commencing with section 1061) of this division. The board may cancel a request for extension of time for failure to pay any annual fee for the request when due. ~~The fee required by Water Code Section 1546 must be submitted before such requests will be considered.~~

Authority: Sections 1058 and 1530, Water Code.

Reference: Sections 1250, 1252, 1398, and 1525, and 1546, Water Code.

Amend the following section:

§ 871. Revocation or Revision of a Declaration.

(a) The board may, upon its own motion or upon petition of any interested person, revoke or revise a declaration, as hereinafter provided.

(b) Upon recommendation of the Chief, Division of Water Rights, and following notice and hearing, the board may adopt an order revoking the fully-appropriated status of a stream system which has previously been declared fully appropriated, or revising any condition specified in a declaration upon which applications to appropriate unappropriated water will be accepted for filing and registrations of small domestic use appropriations will be accepted. The Chief's recommendation for revocation or revision may be based upon any relevant factor, including but not limited to a change in circumstances from those considered in a previous water right decision determining that no water remains available for appropriation, or upon reasonable cause derived from hydrologic data, water usage data, or other relevant information acquired by the Division of Water Rights in the course of any investigation conducted by it.

(c) Any person may petition the board to revoke or revise the fully appropriated status of a stream system included in a declaration. The Chief, Division of Water Rights, shall give notice of receipt of any such petition to all persons known by the Chief to be interested in the fully-appropriated status of the stream system.

(1) The petition shall include hydrologic data, water usage data, or other relevant information based upon which the Chief, Division of Water Rights, may determine that reasonable cause exists to conduct a hearing on the question whether the fully appropriated status of the stream system should be revoked or revised.

(2) The petition may also be accompanied, depending upon the magnitude of the proposed appropriation, either (A) by a proposed application to appropriate unappropriated water, or (B) by a proposed registration of small domestic use, notwithstanding that the proposed application or registration is unacceptable because it proposes appropriation from a stream system declared to be fully appropriated and does not meet existing conditions for acceptance. Any such proposed application or registration should be complete pursuant to the law and the rules of the board, including payment of the filing fee. The board may cancel the application for failure to pay any annual fee for the application when due, ~~except that it shall not be accompanied by a fee.~~

(3) A proposed application or registration submitted pursuant to subsection (c)(2) will not be accepted but will be retained by the board. Should the board thereafter act in response to the petition to change the declaration in a manner which would make the proposed application or registration acceptable, the proposed application or registration will, if otherwise complete pursuant to the law and the rules of the board, be accepted ~~upon timely payment of the minimum filing fee required by law.~~ A proposed application or registration accepted pursuant to this subsection shall be assigned a priority superior to that assigned to any subsequently retained or accepted application or registration, respectively, proposing to appropriate from a source included in the earlier proposed application or registration; provided that, in proceeding upon competing applications accepted because of a change in the declaration pursuant to this section, the board will implement all provisions of law governing approval and rejection of applications including, but not limited to, Water Code §section 1255 relating to public interest.

(4) If the Chief determines that the petition shows reasonable cause to conduct a hearing on the question whether the declaration should be changed, the Chief shall notice a hearing on the issue. The board may thereafter adopt an order changing the declaration or declining to do so.

(5) If the Chief determines that the petition does not show reasonable cause to conduct a hearing on the question whether the declaration should be changed, the Chief shall notify the petitioner, and all persons given notice pursuant to subsection (c) of this section, of such determination. The petitioner may, within 30 days of the date of the notice, file a request that the board review the Chief's determination. Following receipt of any such request timely filed, the board will review the Chief's determination. The board's review shall be limited to the information provided by petitioner to the Chief, pursuant to subsection (c)(1) of this section. Following its review, the board may affirm the Chief's determination, direct the Chief to reconsider the determination, or direct the Chief to notice a hearing on the question whether the declaration should be changed.

Authority: Sections 1058 and 1530, Water Code.

Reference: Sections 1205, 1206, 1207, ~~and 1228.2,~~ and 1525, Water Code.

Amend the following section:

§ 1010. Filing Fees.

Notices of ground water extraction or surface water diversions shall be accompanied by a filing fee required by section 1070 of this division ~~Water Code Section 5006.~~

Authority: Sections 1058, 1530, and 5006, Water Code.

Reference: Sections 1529 and 5006, Water Code.

Add the following chapter and sections:

[Note: Former Chapter 5, Loans to Public Agencies, was repealed in 1981.]

CHAPTER 5. FEES

§ 1061. Definitions.

(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 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 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 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; Section 55002, Revenue and Taxation 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 or \$10 per acre-foot based on the total annual amount of diversion sought by the application.

(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 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).

Authority: Sections 1058 and 1530, Water Code.

Reference: Sections 1525 and 1535, Water Code.

§ 1063. Annual Fees for Water Right Applications.

Under any of the following circumstances, a water right applicant shall pay an annual fee, as set forth in section 1066:

(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 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 Chief, Division of 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.

§ 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 permit or license covered by the petition or request as follows:

(1) The fee for a petition to change the place of use, purpose of use, or point of diversion of a permit or license shall be \$1,000, except as follows:

(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, 1725, or 1735 shall be \$.30 per acre-foot.

(2) 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) 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) 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, shall pay a supplemental filing fee equal to the difference between the filing fee already paid and the amount due pursuant to subdivision (a).

Authority: Sections 1058 and 1530, Water Code.

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

§ 1065. Annual Fees for Petitions.

If any of the following circumstances occurs, a person filing a petition shall pay an annual fee of \$1,000 for each water right permit or license covered by the petition. This annual fee is in addition to any annual fee required under section 1066.

(a) The person requests the board to delay processing the petition.

(b) The person diverts or uses water, before the board approves the requested change, in a manner that is not authorized without approval of the requested change.

(c) The person 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 petition is filed, as may be required under CEQA, within two years after the board provides notice of the petition.

(d) The person fails to provide supplemental information requested pursuant to Water Code section 1701.3 within the time period provided.

Authority: Sections 1058 and 1530, Water Code.

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

§ 1066. Annual Fees for Permits or Licenses.

(a) A person who holds a water right permit or license shall pay an annual fee that is the greater of \$100 or \$0.03 per acre-foot based on the total annual amount of diversion authorized by the permit or license.

(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 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 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. 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. 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.

§ 1068. Registration Fees for Small Domestic and Livestock Stockpond Uses.

(a) A person who registers an appropriation of water for small domestic or livestock stockpond use pursuant to Water Code section 1228.3 shall pay to the board a registration fee of \$250.

(b) A person who renews such registration pursuant to Water Code section 1228.5 shall pay to the board a renewal fee of \$100.

Authority: Sections 1058 and 1530, Water Code.

Reference: Sections 1228.3, 1228.5, and 1525, Water Code.

§ 1069. Proof of Claim.

A person who files a proof of claim under division 2, part 3, chapter 3, article 4 (commencing with section 2575) of the Water Code, shall pay to the board a filing fee of \$500.

Authority: Sections 1058 and 1530, Water Code.

Reference: Sections 1528, 1535, and 2850, Water Code.

§ 1070. Notice of Extraction and Diversion of Water.

A person who files a notice under division 2, part 5 (commencing with section 4999) of the Water Code, shall pay to the board a filing fee of \$115.

Authority: Sections 1058 and 1530, Water Code.

Reference: Sections 1529, 1535, and 5006, Water Code.

§ 1071. Hydroelectric Projects.

(a) Except as provided in subdivision (b), a fee imposed under this chapter for an activity involving the diversion or use of water for the purpose of diverting water for hydropower generation shall be calculated as follows:

(1) At a facility licensed, or subject to licensing, by the Federal Energy Regulatory Commission, the fee shall be the greater of either 30 percent of the fee calculated in accordance with the other applicable provisions of this chapter or \$100.

(2) At all other hydropower generation facilities, the fee shall be the greater of either 50 percent of the fee calculated in accordance with the other applicable provisions of this chapter or \$100.

(b) Subdivision (a) does not apply to the following:

(1) Any permit, license, application, petition or other filing that authorizes or proposes an irrigation use, municipal use, or other consumptive use unless that permit, license, application, petition or other filing is primarily for power use and specifically identifies the consumptive use as an incidental use.

(2) Any fee or portion of a fee imposed pursuant to paragraphs (2) and (3) of subdivision (a) of section 1062, subdivision (d) of section 1063, subdivision (d) of section 1065, or section 1069.

(3) Any expense imposed under part 3 (commencing with section 2000) of division 2 of the Water Code or to any fee imposed under chapter 28 of this division.

Authority: Sections 1058 and 1530, Water Code.

Reference: Section 1525, Water Code.

§ 1072. Joint and Several Liability.

If more than one person is liable for a fee under this chapter, then that liability shall be joint and several.

Authority: Sections 1058 and 1530, Water Code.

Reference: Section 1525, Water Code.

§ 1073. Allocation of Fees and Expenses.

(a) The Chief, Division of Water Rights (Division Chief), is delegated the authority to apply Water Code section 1560, subdivision (b).

(b) The Division Chief's determination under Water Code section 1540 whether the United States Bureau of Reclamation (USBR) is likely to decline to pay fees or expenses for projects within the Central Valley Project, and any allocation of those fees or expenses, shall be consistent with the following criteria:

(1) The Division Chief first shall consult with the USBR to ascertain whether the USBR will pay the applicable amount or agree to contractual arrangements that, in the opinion of the Division Chief, provide an adequate substitute for payment of the fee or expense.

(2) If the USBR declines or is likely to decline to pay the fee or expense or to agree to contractual arrangements acceptable to the Division Chief, the Division Chief shall allocate the fee or expense to the USBR'S water supply contractors in accordance with subdivision (b)(2) of Water Code section 1560. The fee or expense for projects of the Central Valley Project shall be prorated among the contractors for the Central Valley Project based on either the contractor's entitlement under the contract or, if the contractor has a base supply under the contract, the contractor's supplemental supply entitlement. This formula is expressed mathematically as follows:

$$Fee_i = \left(\frac{x_i}{\sum_{i=1}^n x_i} \right) Fee_{USBR}$$

Where:

- i = individual contractor
- x = supplemental water entitlement under the contract or total contract amount if there is no base supply under the contract
- n = number of contractors
- Fee_{USBR} = fee or expense apportioned to the USBR for the Central Valley Project

(c) If a fee or expense or portion thereof is allocated, pursuant to subdivision (b)(2) of Water Code section 1560 or subdivision (b) of this section, to an individual water supply contractor that is a federal agency or Indian tribe who has declined, or is likely to decline, to pay the fee or expense, the Division Chief may apply subdivision (b) of Water Code section 1560 to the fee or expense or portion thereof allocated to that contractor.

(d) If a water supply contractor allocated a portion of an annual fee pursuant to subdivision (b)(2) of section 1560 of the Water Code or subdivision (b) of this section successfully petitions the board to reduce or eliminate that allocation, the board's action on the petition shall not provide a basis for recalculation or reapportionment of the annual fee for that fiscal year as apportioned to any other contractor that has not filed a petition for reconsideration of its allocation.

(e) The following definitions apply to this section:

(1) "Base supply" means the amount of water delivered to a water user by USBR from the Central Valley Project that is designated as base supply in a water supply contract between the user and the USBR.

(2) "Supplemental supply entitlement" means the amount of water exceeding base supply delivered from the Central Valley Project to a water user.

Authority: Sections 1058 and 1530, Water Code.

Reference: Sections 1525, 1540, and 1560, 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. 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) 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.

(c) If a change in the identity of the fee payer is reported to the board before the assessment is due, then the new fee payer is responsible for payment of the assessment 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 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.

Authority: Sections 1058 and 1530, Water Code.

Reference: Sections 1525, 1535, 1536, and 1537, Water Code; Part 30 (commencing with section 55001) of division 2 of the Revenue and Taxation Code.

§ 1075. Collection of Fees and Expenses.

(a) The State Board of Equalization 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 for collection. The expenses that the State Board of Equalization 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 is deemed to have registered with the State Board of Equalization for purposes of the Fee Collection Procedures Law and entry into the State Board of Equalization 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 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 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 shall collect the fee. The State Board of Equalization'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 may rely on the fee payer information provided by the board until the board notifies the State Board of Equalization 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 of changes or corrections to the identifying information.

Authority: Sections 1058 and 1530, Water Code.

Reference: Sections 1525, 1535, 1536, and 1537, Water Code.

§ 1076. Cancellation for Nonpayment of Fees.

The board may cancel an application, petition, or request for release from priority for failure to pay either a filing fee required under section 1062 or 1064 or an annual fee required under section 1063 or 1065 of this chapter. Before canceling the application, petition, or request, the board first shall notify the fee payer that nonpayment of the fee may result in cancellation of the application, petition or request. If the fee payer does not submit the required fee within 60 days after such notification, the board may cancel the application, petition, or request.

Authority: Sections 1058 and 1530, Water Code.

Reference: Sections 1270, 1271, 1525 and 1535, 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 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.

(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. If the board or State Board of Equalization receives a 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 et seq. and 1525, Water Code.

§ 1078. Objection to Determination of Expenses.

(a) In a proceeding under chapter 3 (commencing with section 2500) of part 3 of division 2 of the Water Code, any objection to the board's collection of a filing fee for proof of claim or

of interim or partial payments pursuant to Water Code section 2865, 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 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.

(b) Any objection to the final determination of expenses, or apportionment thereof, made by the board and filed with the court shall be made in accordance with the provisions of article 13 (commencing with Water Code section 2850) of chapter 3 of part 3 of division 2 of the Water Code.

Authority: Sections 1058 and 1530, Water Code.

Reference: Sections 1120 et seq., 1525, and 2850 et seq., Water Code.

Amend the following section:

§ 3833. Application Fees and Refunds.

(a) Each application for a Tax Certification shall be accompanied by a fee of \$200.

(b) Each application for a Water Quality Certification shall be accompanied by a fee deposit for processing the application. Processing the application includes evaluating the activity proposed in the application and determining whether the certification should be issued and what conditions, if any, should be imposed on the certification.

(1) If the activity subject to certification includes, or involves construction or modification of facilities for the purpose of, producing hydroelectric power, and the activity or facilities require the issuance or amendment of a FERC license, a deposit in the amount of any annual fees due under section 3833.1 that have not yet been paid shall accompany the application.

(2) If the activity is not subject to subsection (b)(1) of this section but is subject to subparagraph (b)(1)(B) of section 3855, then an initial deposit shall accompany the application, and subsequent deposits shall be required as necessary to cover the state board's reasonable costs of processing the application as follows:

(A) An initial deposit of \$1,000 shall accompany all applications.

(B) If the state board's reasonable costs exceed \$750, the applicant shall provide a second deposit in the amount of the unpaid reasonable costs, if any, plus \$5,000, or a lesser amount estimated by the state board to be necessary to complete processing the application.

The state board may require additional deposits when the state board's reasonable costs exceed the total amount previously deposited less \$2,000. The additional deposits shall be in the amount of the state board's unpaid reasonable costs, if any, plus \$5,000, or a lesser amount that the state board estimates to be necessary to complete processing the application. The state board

shall notify the applicant by certified mail of any deposits required under this subsection (b)(1)(B), and the deposit shall be due within sixty (60) days from receipt of the notice.

(C) After the state board acts on the application, or if the applicant withdraws the application, the applicant shall make a final payment so that the total fee paid by the applicant equals the reasonable costs incurred by the state board in processing the application. The state board shall notify the applicant by certified mail if the applicant owes a final payment on the application fee, and the final payment shall be due within sixty (60) days from receipt of the notice. If the deposit(s) exceed the state board's reasonable costs, the state board shall refund the excess amount to the applicant within sixty (60) days of final action on the application.

(D) For the purposes of this subsection (b)(2+), the reasonable costs of processing the application include the state board's reasonable costs incurred in anticipation of the filing of an application, including participation in pre-filing consultation and any investigations or studies to evaluate the impacts of the proposed activity, to the extent that these costs are reasonably necessary to process the subsequently filed application. The state board's reasonable costs include any reasonable costs of processing the application incurred by a regional board at the state board's request. The state board may seek reimbursement of costs pursuant to this subsection (b)(1)(2) only after the applicant has submitted an application to the state board.

(E) If the activity subject to water quality certification is also the subject of a pending application, petition, or registration subject to section 1062, 1064, 1067 or 1068 of this division, and the application, petition, or registration is filed before or simultaneously with the application for certification, the applicant shall pay only the fees imposed under chapter 5 (commencing with section 1061) of this division, and no additional deposit is required under this subsection (b)(2).

~~(32) If the activity is not subject to Subsection (b)(1) or (b)(2) of this Section and may involve a discharge of dredged or fill material, then:~~

(A) An initial deposit of \$500 shall accompany all applications.

~~(B) The total fee, including deposit, for issuing standard certification as defined in Subsection 3831(p) of this Chapter shall be \$500 or, if \$500 does not cover the agency's cost to issue certification, the appropriate one-time amount determined from Section 2200(e), Title 23, of the California Code of Regulations.~~

~~(C) The total fee, including deposit, for taking any other certification action for a discharge of dredged or fill material shall be the appropriate one-time amount determined from Section 2200(e), Title 23, of the California Code of Regulations.~~

(C) If waste discharge requirements or a waiver of waste discharge requirements are to be issued in conjunction and simultaneously with taking action on the application for water quality certification, or the project is to be regulated through general waste discharge requirements or general waivers thereof, the applicant shall pay only one fee. If action is taken on the application for water quality certification, but waste discharge requirements or a waiver of waste discharge

requirements are later issued for the same or revised activity, the applicant shall pay a new fee for the subsequent waste discharge requirements.

~~(3) The licensee/permittee shall provide a fee of \$60 for review and processing of a notice whenever conditional water quality certification of a federal general license or permit requires that a licensee/permittee send a notice to a regional board of intent to proceed with the licensed/permitted activity. No fee shall be required for notice to the state board.~~

(4) If a revised application for water quality certification is filed for the same project that which had been previously denied certification without prejudice or when an original application is voluntarily withdrawn by the applicant pursuant to Subsections 3835(b), 3836(b), 3836(c), or 3838(c) of this Chapter, the revised application shall be accompanied by any unpaid fee or portion thereof ~~that was previously delinquent or outstanding on~~ for the original application. Except as provided in this Section, no additional fee shall be required for the revised application if:

(A) the revised application is filed within twelve (12) months of the denial without prejudice or voluntary application withdrawal,

(B) the revised application package corrects the procedural problems which caused the original denial without prejudice or voluntary application withdrawal, and

(C) the project has not changed significantly in scope or potential for adverse impact (i.e., no further technical review is necessary).

~~(5) If waste discharge requirements or a waiver of waste discharge requirements are to be issued in conjunction and simultaneously with taking a water quality certification action, the applicant shall pay only a fee, determined from Section 2200, Title 23, of the California Code of Regulations, which reimburses the agency for taking the most costly of the two simultaneous regulatory actions.~~

~~If action is taken on a certification application, but waste discharge requirements or a waiver of waste discharge requirements are later issued for the same or revised activity, the applicant shall pay the initial certification fee and any subsequent waste discharge requirements fee.~~

(c) ~~For certification for which a specific fee is not established in this Section, the~~ The fee for handling processing an application for such certification if a specific fee is not established under this section shall be set at the hourly rate specified in Section 2200.4, Title 23, of the California Code of Regulations. An initial deposit of \$500 shall accompany all such applications.

(d) The fees described in this Section do not include the costs of preparation of any CEQA document, should one be required.

(e) Denial of certification shall not be grounds for refund of any part of a certification application fee.

(f) If the applicant is a federal agency, the fees described in this Section apply to the extent authorized by federal law.

Authority: Sections 1058 and 13160.1, Water Code.

Reference: 26 USC Section 169, 40 CFR Section 20; 33 USC Section 1341; and Sections 1060, 13160 and 13160.1, 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 plus \$ 0.085 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 plus \$0.01 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.

Amend the following section:

§ 3867. Petitions for State Board Reconsideration.

(a) ~~The state board may be petitioned by an~~ (1) An aggrieved person may petition the state board to reconsider an action or failure to act taken by the executive director, a regional board, or an executive officer under Articles 1 through 5 of this Chapter. The executive director may be designated by the state board to reconsider such an action or failure to act by an executive officer or regional board.

(2) A fee determination under subdivision (1) of subdivision (b) of section 3833 or section 3833.1, made by the state board or by an officer or employee of the board acting under delegated authority, is subject to reconsideration in accordance with chapter 4 (commencing with Section 1120) of part 1 of division 2 of the Water Code and the procedures set forth in Article 12 (commencing with section 768) of chapter 2 of division 3 of this title, and is not subject to the procedures set forth in this section. 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.

(b)(1) The state board and the executive director, when acting as the state board's designee, may undertake such reconsideration on their own motion. They shall notify the applicant (if any), the federal agency, and all interested persons known to the state board or executive director and give those notified the opportunity to submit information and comments before taking a final reconsideration action (as listed in Subsection 3869(a) of this Chapter).

(2) If such reconsideration is initiated more than thirty (30) days after the certification action in question, any rescission or amendment of the certification action resulting from such reconsideration shall not apply to any activities subject to a federal license or permit that:

(A) was issued in reliance on that certification action, and

(B) was issued before the federal agency was notified that such reconsideration had been initiated.

(3) Nothing in Subsection (b) of this Section is intended to limit the authority of a federal agency to issue a new or amended license or permit that incorporates any changes ordered by the state board or executive director following reconsideration of a certification action.

(c) A petition for reconsideration shall be submitted in writing to and received by the state board within 30 days of any action or failure to act taken by the executive director, a regional board, or an executive officer under Articles 1 through 5 of this Chapter.

(d) A petition shall contain:

- (1) the name, address, and telephone number of the petitioner;
- (2) the specific action or failure to act which the state board is requested to reconsider and a copy of any document issuing or denying certification that is referred to in the petition;
- (3) the date on which the certification action or failure to act occurred;
- (4) a full and complete statement of reasons why the action or failure to act was inappropriate or improper;
- (5) the manner in which the petitioner is aggrieved;
- (6) the specific action by the state board which the petitioner requests;
- (7) a list of persons, if any, other than the petitioner and applicant, if not the petitioner, known to have an interest in the subject matter of the petition;
- (8) a statement that the petition has been sent to the appropriate regional board or executive officer and to the applicant, if not the petitioner; and
- (9) a copy of a request to the executive director or appropriate executive officer for preparation of the state board or regional board staff record, if applicable and available, which will include a tape recording or transcript of any pertinent regional board or staff hearing.
- (10) A summary of the manner in which and to what extent the petitioner participated in any process (e.g., public hearing testimony, discussion with agency personnel, correspondence), if available, leading to the action or failure to act in question. If a process for participation was available, but the applicant did not participate, the petition shall include an explanation for the petitioner's failure to participate.

Authority: Sections 1058; and 13160.1, Water Code.

Reference: 26 USC Section 169, 40 CFR Section 20; 15 USC Section 636, 40 CFR Section 21; 33 USC Section 1341; Sections 7, 183, 186, 1059, and 13160, and 13160.1, Water Code; and Sections 44533 and 44539, Health and Safety Code.