
State Water Resources Control Board

NOTICE OF PROPOSED EMERGENCY RULEMAKING

Water Rights Fees for Fiscal Year 2015-2016

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

Required Notice of Proposed Emergency Action

Government Code section 11346.1, subdivision (a)(2) requires that, at least five working days prior to submission of a proposed emergency action to the Office of Administrative Law (OAL), the adopting agency must provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. This document provides the required notice. Upon receiving the proposed emergency regulation, OAL shall provide public notice and 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) to adopt emergency regulations revising and establishing fees to be deposited in the Water Rights Fund in the State Treasury (Wat. Code, §§ 1525, 1530, 1551, 13160.1). The Water Code 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 Water Rights Fund for support of water rights program activities.

On December 1, 2015, the State Water Board adopted an emergency regulation amending the water rights fee schedules in title 23, division 3, chapter 5, sections 1062 of the California Code of Regulations to include a new fee for temporary permits for the diversion to underground storage during high flow events.

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, 13160.1). Water Code sections 1530, subdivision (b) and 13160.1, subdivision (d)(2) state that “[t]he adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace,

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, 13160.1).

Moreover, the State Water Board finds that the proposed amendments to the Board’s fee regulations must be adopted immediately in order to implement the Governor’s November 13, 2015 Executive Order (B-36-15), which directs the Board to, among other things, prioritize temporary water rights permits to accelerate approvals for projects to capture high precipitation events for local storage and recharge.

The State Water Board is unable to address the situation through non-emergency regulations because, as discussed above, it has a mandatory legal duty to adopt the fee schedules by emergency regulation.

Authority and Reference (Gov. Code, § 11346.5, subd. (a)(2))

Water Code sections 1058 and 1530 provide authority for the emergency regulation. The emergency regulation implements, interprets, or makes specific Water Code sections 386, 1425, 1426, 1525, 1535, 1536 and 1537.

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, water leases, and applications. In addition, the existing regulations establish requirements for filing a petition for reconsideration of a fee determination made by the State Water Board. The water 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 FY 2015-2016 fee schedule to add a fee for temporary permits for diversion to underground storage during high flow events.

There is no comparable federal statute or regulation. 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))

An estimate of cost or savings is unable to be calculated at this time because this a new fee and the permit is only required if a water right holder is requesting approval for a project to divert water to underground storage during high flow events. It is unknown how many water right holders are planning such projects.

There is no cost to any local agency or school district for which reimbursement is required.

There is no cost or savings in federal funding to the state.