

State of California
California Natural Resources Agency
California Code of Regulations, Title 23. Waters.
Division 2. Department of Water Resources
Chapter 1. Dams and Reservoirs
Article 6. Fees

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Initial Statement of Reasons

1. Introduction

The Department of Water Resources (Department), through its Division of Safety of Dams (DSOD) implements California's Dam Safety Program, which regulates nearly 1,250 jurisdictional dams. California's Dam Safety Program was established in 1929, following the 1928 catastrophic failure of St. Francis Dam. Until 2004, funding for the program was solely General Funded. Although dam owners paid application filing fees and annual fees in accordance with Water Code section 6300, these monies only partially covered the costs of the program and were deposited directly into the State's General Fund. In 2004, section 6307 of the Water Code was amended to require program funding solely through fees paid by dam owners. As a result, the annual schedule of fees increased to the level required at the time to fully fund the program, in combination with application filing fees, without General Fund monies. Since that time, annual fees are increased as necessary by the Director of the Department to cover periodic cost of living increases for the program. In advance of annual fee increases, the Department provides a schedule of fees reflecting the cost of living increases to the Legislature and dam owners.

Recent efforts to bolster dam safety have been through the Governor's Four-Point Plan to Bolster Dam Safety and Flood Protection in February 2017, and the passage of Senate Bill 92, approved on June 27, 2017. These new mandates require bolstered reevaluation studies of dam appurtenances, starting first with spillways, and new legislation adopted through Senate Bill 92 requires the Department to review and approve inundation maps for dams and critical appurtenant structures, and provides the Department with enhanced enforcement measures. To initially fund the additional work and cost increases resulting from these mandates, the Department was loaned \$6.5 million from the General Fund and the Dam Safety Program's annually appropriated budget was equally increased in Fiscal Year 2017-18. The term of the loan repayment is annually for four years using revenue collected through fees paid by dam owners. Additional legislative requirements have been adopted through Assembly Bill 1270, approved on February 26, 2018, for enhanced dam inspections and updates to DSOD's protocols for inspections and reevaluations based on recommendations by a convened technical advisory panel with recognized expertise in dam safety practices and risk management. Annual fees collected by the Department support DSOD's Dam Safety Program by funding programmatic costs, new mandates, and the loan repayment.

As indicated above, the Department had been collecting annual fees based upon requirements in Water Code section 6307. Beginning in 2004, that section specified the amount of annual fees (\$400 per dam

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plus \$110 per foot of height) and allowed cost-of-living increases as approved by the Director of the Department. Newly enacted law, Senate Bill 92, requires the Department's schedule of fees to also cover the new costs of the dam safety regulatory program, including reviewing and approving inundation maps, performing more detailed reevaluation studies of appurtenant structures, repaying budgetary loans, and maintaining a prudent reserve. In accordance with new subdivision (a)(3) of Water Code section 6307, the schedule of fees adopted shall be based, in part, on the height of the dam on a per-foot basis.

The methodology for calculating annual fees proposed in this regulation is substantially similar to the Department's existing methodology of assessing annual fees to cover the costs of administering the Dam Safety Program. Nonetheless, amendments to the governing annual fee regulation are now needed to refine and clarify the methodology, consistent with new directives in SB 92. Further, amendments are necessary to ensure that the schedule of fees effectively recovers the Department's actual costs each fiscal year. The Department is proposing regulations that define a methodology for establishing the annual schedule of fees, which is similar to fee schedules adopted by other state regulatory agencies subject to variable revenue swings (e.g., CCR Title 17, section 95203). As part of this process, a standardized method will define how the annual fee revenue will be determined, how the Department will adjust the fee each year to account for the over-collection or under-collection of revenue, and how the annual fee will be calculated. Dam owners will be notified of the actual fee schedule prior to the annual billing that occurs by April 30 of each year for the fiscal year beginning July 1 of the same calendar year.

On March 28, 2018, the Department's adopted interim emergency regulations describing the methodology for calculating the annual schedule of fees. The emergency regulations are only effective for up to one year after adoption. Therefore, the proposed permanent regulations are necessary to provide a permanent and standardized methodology for developing the annual schedule of fees.

Between May 29 and June 8, 2018, DSOD conducted outreach by notifying interested persons that the proposed regulations were posted online for an informal public comment. The purpose of this effort was to solicit comments from dam owners prior to the formal permanent rulemaking so that alternate methods using other parameters with dam height could be evaluated and the regulations revised as necessary for clarity. With DSOD being the only state dam safety program that is solely funded by dam owners, no other state models could be researched.

Between March 8, 2018 and June 8, 2018 DSOD received a total of 44 comments from 32 interested people representing public and private dam owners during the formal comment period of the emergency regulations, annual billing of 2018, and the informal public comment period of the permanent rule making. Comments fell into the following main categories: ability to pay, timeframe to pay, and cost allocation considering other parameters than only dam height, such as downstream hazard classification and inundation mapping requirements. General comments included a lack of understanding that annual fees support more than the cost of the annual inspections, which requires more clarity in the proposed regulations. Based on comments received, DSOD has evaluated various alternatives to the method outlined in the proposed regulations and has revised the regulations for clarity. DSOD understands the financial constraints faced by many of the dam owners who own dams classified from low to extremely high hazard. Alternate methods used in assessing the cost of the program to dam owners considered comments received by dam owners or their representatives, direct/indirect effects of recent legislative changes on dam owners, and the overall objectives of the dam safety program and its benefits to dam owners.

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2. Problem Statement

To maintain the level of public safety needed for the residents of California, the Dam Safety Program must have a sustainable level of funding to support staffing levels that allow DSOD to have adequate staffing, a high level of expertise, and rigorous oversight of the nearly 1250 dams under state regulation with respect to dam safety. Before the enactment of SB 92, Water Code section 6307 specified the amount of the annual fee, which was \$400 per dam plus \$110 per foot of height. The statute further allowed cost-of-living increases as approved by the Director, and the Department used this authority when annual fees increases were required. Senate Bill 92 removed the outdated schedule of fees (\$400 per dam and \$110 per foot of height) for the annual fees from the statutes and directed the Department to develop a schedule of fees to cover the reasonable regulatory costs of carrying out the program, including but not limited to the review of inundation maps, the amounts necessary to repay budgetary loans, and a prudent reserve. While SB 92 contains general parameters for the collection of annual fees, the proposed regulation is necessary to explain how the revenue required for the program is determined and how the dam's annual fee, as required in Water Code section 6307, is calculated based upon the parameters in the statute, such as dam height and limited rates for certain types of dams.

3. Overall Purpose

The proposed regulations are necessary to identify the methodology used to determine the annual schedule of fees required to cover the Department's reasonable regulatory costs in carrying out the supervision of dam safety. This regulation ensures that the amount of fees collected is not overly conservative, which can impact the financial resources of dam owners, nor is it insufficient, which can impact the primary functions performed by the Dam Safety Program for public safety. The standardization of the methodology allows for the schedule of fees to be calculated annually based on the estimated revenue required.

The purpose of the proposed regulations is to interpret and make specific the provisions of amended section 6307 of the Water Code by specifying the methodologies and parameters used in determining the schedule of fees and associated penalties for late payments. These regulations include the following:

- Determination of the amount of revenue required on a fiscal year basis
- Explanation of the components of the schedule of fees
- Establishment of the various rate structures based on provisions in section 6307
- Description of penalties for delinquent payment of annual fees
- Assessment of fees for new or enlarged dams in operation during a fiscal year
- Provisions for supplemental billing during a fiscal year
- Determination of dams permanently inoperative for annual fee billing

4. Necessity and Purpose of each Provision

CCR Title 23. Article 3. Section 315. Annual Fee

(a) The purpose of subsection (a) is to explain that annual fees are used to recover costs expended each fiscal year for the statewide regulation of dams with respect to safety. It is necessary to define the time period for which the annual fee covers and the date in which dam owners will be notified of the annual fee so that dam owners may plan the cost into their annual budget each year.

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(a)(1): It is necessary to define, in an equation format, the budgetary terms that make up the annual fee revenue (AFR) that is recovered through the billing of annual fees because it provides consistency in the calculation from year to year. The terms used in the equation to determine AFR need to be defined for clarity.

(a)(1)(A): It is necessary to describe how Required Revenue (RR) is calculated to clarify that it is the costs to solely support the Dam Safety Program.

(a)(1)(B): It is necessary to describe how the Filing Fee Revenue (FFR) is determined as this amount offsets the amount of the AFR, which is the total amount recovered from dam owners. The Filing Fee Revenue is the amount earned from application fees imposed under Section 314 of the Regulations.

(a)(1)(C): It is necessary to describe how the true-up is determined as this component ensures that the annual fees billed have accounted for an over- or under-collection of fees from the prior fiscal year.

(a)(1)(D): It is necessary to define the Dam Safety Program as the annual fees collected support solely this program.

(a)(2): It is necessary to describe the Annual Schedule of Fees in an equation format to clarify how each billed amount is determined. The annual fee schedule is comprised of a flat fee paid by every dam owner of a jurisdictional dam and a fee based on the height of dam that is applied to operational dams. A fee schedule comprised of two components is necessary in order to separate billing costs for operative and inoperative dams. By necessity a rate based on the height of the dam is required in section 6307 of the Water Code, which states that the schedule of fees adopted shall be based, in part, on the height of the dam on a per foot basis.

(a)(2)(A): It is necessary to define how the Administrative Fee is calculated as it applies to all jurisdictional dams as a fixed-fee. By defining it as a specific percentage of the AFR divided by the total number of jurisdictional dams, it provides consistency in the determination of the fee component from year to year.

(a)(2)(B): It is necessary to define *height of dam* to have the same meaning as specified in section 6307(c) of the Water Code for consistency in determining a dam under state jurisdiction and in determining the *height of dam rate* used in the schedule of fees.

(a)(2)(C): It is necessary to define how the *height of dam rate* is determined for clarity and consistency in determining the rate annually. This rate only applies to operational dams; therefore, the total linear feet of dam height of only operational dams is used in the calculation of the rate.

(a)(3): It is necessary to describe the three rate structures that comprise the schedule of fees in accordance with the limits established in the sections 6307 (d), (e), and (f) of the Water Code. The following special provisions are provided in the Water Code for select dams and dam owners based on reservoir capacity, reservoir purpose, and owner type: 1) dams with no more than 100 acre-feet of storage and used as a subject of study by a school (section 6307(d)); 2) dams located on farms or ranch properties (section 6307 (f)); and 3) privately owned dams with less than 100 acre-feet of storage. It is necessary to establish the definition of each rate structure in the following subsections.

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(a)(3)(A): It is necessary to explain that the General Rate applies to all dams that do not qualify for a special provision, and the rate structures that are limited are derived from reductions of the General Rate.

(a)(3)(B): It is necessary to define that the Reduced Rate is calculated at 20 percent of the General Rate for dams qualifying under Water Code sections 6307(e) or (f) as these sections only specify that the Department shall limit the total annual fee for dams or reservoirs under these provisions to no more than 20 percent of the fees assessed under the General Rate.

(a)(3)(C): It is necessary to define that the Limited rate is the fixed-rate component of either the General or Reduced Rate as neither Section 316 for inoperative dams or Water Code section 6307(d) for dams used in school studies specifies an amount or percentage of the General Rate applicable to dams under these exceptions. The fixed-rate component is based on the rate structure applied to the dam had it not qualified under Section 316 for inoperative dams or section 6307(d) for dams used in school studies.

(b): The purpose of subsection (b) is to clarify that annual fees are due annually on July 1 as required in Water Code section 6307(b) to align with the beginning of the fiscal year for which the fees are assessed. In addition to other recourse that the Department has for the delinquent payment of annual fees, Water Code section 6428 requires the assessment of a penalty and interest for late annual fees, and it is necessary to explain and clarify that penalties for delinquent payment of annual fees are subject to monetary penalties under section 6428(b).

(c): The purpose of subsection (c) is to define how annual fees will be assessed on new or enlarged dams that have construction completed or are operational after July 1 of the fiscal year billed. It is necessary to define a standardize criteria that is applied consistently and fairly to all dams and their owners.

(c)(1) The purpose of subsection (c)(1) is to define and clarify when dams are billed the full annual fee amount for circumstances when the dam's construction is completed or the dam becomes operational after July 1 and before December 31. It was deemed reasonable to assess a dam the full annual fee under this timeframe.

(c)(2) The purpose of subsection (c)(2) is to define and clarify the annual fee required for a dam if it is completed or operational for less than half of the fiscal year billed. It is reasonable to prorate the annual fee to be half of the full annual fee, and to require no annual fee if the dam is completed or operational less than one quarter of the fiscal year billed.

CCR Title 23. Article 3. Section 316. Inoperative Dams

The purpose of Section 316 is to describe the requirements for a dam to be designated as inoperative for the dam to qualify for the Limited Rate. Inoperative dams are still subject to annual inspections by DSOD to verify their status. It is necessary to list the criteria that DSOD considers in its determination of the operational status of a dam so dam owners understand the basis for DSOD's decision:

(a): It is necessary to define and clarify the physical condition of the inlet to the outlet works to prevent impoundment behind the dam.

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(b): It is necessary to define and clarify that the size of drainage area and associated runoff are evaluated with the capacity of the dam's low-level outlet to determine if the absence of water impoundment is reasonably met under expected conditions.

(c): It is necessary to clarify that an inoperative dam serves no benefit to the dam owner and others to qualify for the Limited Rate.

5. Economic Impact Assessment

The Department has determined that the proposed regulations are not major regulations as defined in the Administrative Procedures Act. Because of the newly enacted law, Senate Bill 92, the Department requires a new schedule of fees to recover costs of the Department's regulatory program, which may include the addition of the review of inundation maps, more detailed reevaluation studies of dams and appurtenant structures, repayment of budgetary loans, and a prudent reserve.

The proposed regulation is necessary to refine and explain how the fee required in the amended California Water Code section 6307 is calculated based on parameters in that statute, such as dam height and provides provisions for limited rates for certain types of dams. The estimated economic impact of the proposed regulations may affect businesses and private individuals that own dams; rate payers of services from affected privately and publicly owned dams such as water and power, and private individuals. The estimated economic and fiscal impacts are detailed in the Economic and Fiscal Impact Analysis (Form 399) and its attachments.

The Department oversees the regulation of approximately 1,250 jurisdictional dams which are owned by 629 dam owners across the State. Of the 629 dam owners, 399 are private owners and 230 are public owners. Private owners include small businesses, associations, and investor owned utilities. The direct costs to the private sector and public sector are estimated at \$5 million and \$16 million, respectively. After full implementation of the regulations, the maximum 12-month economic impact to the private sector will be a total of approximately \$26 million, which includes direct, indirect and induced cost estimates.

The privately-owned dams are generally used in the following industries in California: water and energy supply, agriculture, and recreation (homeowners' associations/non-profit organizations). The regulation will impose direct costs on these types of California businesses. The regulations may result in minor reductions in business competitiveness in California as some similarly situated dam owners and associated businesses outside of California may not be subject to these types of requirements and costs. However, many of the industries supported by dams do not generally compete for customers with out-of-state businesses.

The 230 public dam owners include State and local agencies. The Department does not foresee any agencies being eliminated; however, each agency's budget will likely need to be increased to cover the any increases in annual fees from year to year. The costs to state and local agencies dam owners would likely be passed along as an indirect cost to applicable rate payers.

The proposed regulation will fund DSOD's Dam Safety Program and its mission of protecting life and property from dam failures through the supervision of dam safety. The core benefits of this proposed regulation are in public safety and environmental protection. DSOD has regulatory authority over the operation, maintenance, and construction of jurisdictional size dams. Components of the regulatory

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program include maintenance inspections, surveillance monitoring, design and construction reviews of plans and specifications, construction oversight, re-evaluation studies, inundation map reviews, and emergency response. Enforcement actions are also a component of the program used to ensure dam safety through reservoir restrictions, directives, penalties, and property liens. In 2017, the Dam Safety Program was expanded to bolster dam safety through an expansion of its reevaluation program and the new legislative requirement to review and approve inundation maps. Outcomes of the Dam Safety Program reduce the risk of dam failure or an uncontrolled release of water resulting in the prevention of life loss, reduction in property damage, and reductions in impacts to the environment.

In summary the Department has determined the following:

Creation or elimination of jobs within California

The Department estimates that less than five (5) jobs may be eliminated to cover the increase of annual fees. Since many factors go into the decision to discontinue a business and eliminate positions, it is difficult to predict how many businesses or jobs would be eliminated due to this regulation.

Creation of new businesses or elimination of existing businesses within California

The Department does not foresee new businesses being created or eliminated from this regulation. Private owners of dams will incur costs to comply with the regulation and may decide to discontinue use of their dams as the result of the cost of doing business

Expansion of businesses currently doing business within the state

The Department does not anticipate businesses being expanded.

6. Documents Relied Upon

California is the only state dam safety regulatory program specially funded through fees paid by dam owners. Therefore, the Department did not rely on regulatory fee structures from other dam safety programs or any technical documents for the development of the proposed regulations.

7. Benefits

The proposed regulations benefit the State by supporting the California Dam Safety Program that provides regulatory oversight of about 1,250 jurisdictional dams with respect to dam safety for the protection of public safety as well as the environment. Dams provide multiple benefits to the State in areas associated with power production, water supply, agricultural use, industrial use, flood control, recreation, and the environment. Given the critical role that dams contribute to the welfare of the State and considering that millions of people statewide live near dams or use them for recreation, the consequences of a dam failure may be extreme with respect to high life loss, billions in economic loss, and adverse environmental impacts.

The proposed regulations ensure that the Dam Safety Program collects an adequate amount of revenue to support its annually appropriated budget and provides a means to not excessively over- or under-collect fees to avoid unnecessarily impacting dam owners. The Dam Safety Program reduces the risk of the failure or an uncontrolled release of water from a dam or its appurtenant structures resulting in the prevention of life loss, reduction in property damage, and lessening impacts to the environment.

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8. Alternatives

Government Code section 11346.2 requires a state agency responsible for preparing a regulation to consider and evaluate reasonable alternatives to the proposed regulatory action and provide reasons for rejecting those alternatives. This section discusses alternatives evaluated and provides the reasons these alternatives were not included in the proposal.

Proposed Regulations: Based Primarily on Dam Height

Section 6307 of the Water Code stipulates that the schedule of fees adopted be based, in part, on the height of the dam on a per foot basis. The proposed schedule of fees is comprised of a fixed-rate administrative fee with a variable rate component based on the height of the dam. The reason dam height was selected as the primary factor in the proposed schedule of fees is that dam height is the parameter that correlates best with the level of dam safety oversight required with respect to field inspections, surveillance monitoring, and complexity of analyses (reevaluation studies) performed on dams. Dam height is a critical parameter to consider for the design, review, and safety of a dam.

A dam is considered large when its height is 50 feet or greater. The height of water behind a dam drives the need for critical design features that are impacted by the increased pressure on the dam that will be the same regardless of the volume of water stored. For instance, large dams need design features like drains and filters to mitigate potential seepage and uplift to maintain stability and prevent erosion within or under the dam, and they typically required surveillance monitoring in the form of piezometers, monuments, seepage weirs, and inclinometers.

Additionally, the increase in vertical weight caused by a large dam necessitates the need to understand and mitigate for geological imperfections in the dam's foundation, which are critical to dam safety. Sites that are better suited for large dams typically have faults and other geologic anomalies that need critical review to make certain settlement and cracking do not occur at the dam. Many historic dam failures that have resulted in the loss of life, such as the St. Francis and Baldwin Hills Dams in California and the Teton Dam in Idaho, have been due to unrecognized or unmitigated defects in the site geology.

Lastly, large dams tend to have watersheds that can range from 1 to over 1,000 square miles in size; therefore, these dams generally have larger appurtenant structures, such as spillways and control gates, to safely pass design flows. Overall, the larger the dam is in terms of height, the greater the regulatory oversight is needed with respect to dam safety as the complexities of these structures increase so does the number of possible failure modes that need to be identified and evaluated on an ongoing basis. Therefore, the proposed schedule of fees allocates the program's cost most reasonably to dam owners commensurate with the burden their dams place on the program and the corresponding benefits received by the dam safety regulatory oversight.

Alternative 1 - No Regulations

This alternative considers the possibility of allowing the annual fee emergency regulations to expire and relying solely upon Water Code section 6307(a)(2) which requires, in part, the Department to provide a schedule of fees to the Legislature and to every dam owner, whenever any adjustment is made to the fees. Water Code section 6307(a)(3) does provide some guidance on how the annual fee is determined, by stipulating that the fee covers the Department's reasonable regulatory costs, that the schedule be based, in part, on the height of the dam and that the fee for certain categories of dam owners be limited. No other specific fee determination criteria are included in the statutes.

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This alternative was not accepted for the following reasons:

1. Water Code section 6307(a)(1) specifically requires the Department's schedule of fees to be adopted by regulation.
2. Regulations are needed to clarify how the Department assesses the various factors for determining the annual fee revenue needed, how these factors are applied, and the means for ensuring a standardized and consistent year-to-year approach for determining the fees.
3. The intent of Water Code section 6307 was for the fee schedule to be readily transparent to dam owners and the Legislature.

Regulations are therefore needed to provide greater clarity and uniformity in the way the necessary annual fee revenue is calculated, the standardized equation that the Department will use in calculating the fee schedule, the three rate structures that will be applied, and how year-to-year adjustments are applied to account for any over-collection or under-collection of revenue.

Alternative 2 - Added Fee Component that incorporates Reservoir Storage

This alternative entailed the addition of reservoir storage within the fee schedule equation, as an additional "surcharge" assessment. If reservoir storage and dam height are both included in the equation, there would be better correlation between the annual fee and the physical attributes of the dam site. For this approach, dams would be grouped into one of four categories; such as 15 to 99 acre-feet (AF); 100-999 AF, 1,000 to 9,999 AF, and 10,000 AF and greater. Then, an equitable storage fee factor would be determined for each of the four groups resulting in those within the higher storage groups having increasingly greater fee factors. Doing so could reduce the impact that dam height alone would otherwise have on the fee calculation and thereby help relieve the financial impact to some dam owners who have relatively tall dams that do not impound a high volume of water.

After careful consideration this alternative was not selected since dam height generally serves as a proxy to reservoir storage. Although the reservoir storage component could make the fee schedule more favorable to 20% of the dam owners, it would likely adversely impact the other 80%, which are those within the three highest reservoir storage groups who would be burdened with a second size-related rate factor. Since private owners of dams with reservoirs classified as small (less than 100 AF) and dams owned and use by farmers/ranchers, which represents about 30% of the inventory, already receive a significant reduction in their annual fees based on current provisions in the Water Code; therefore, it would arguably be unfair to provide an even greater reduction thereby shifting additional costs to other dam owners. Using reservoir storage volume would also make the fee determination overly complex and would require dam owners to conduct bathymetric surveys to update their storage volume, as summarized below.

Most of the Department's reservoir storage data dates to the time when the dam was under design. As such, data may be outdated and for the most part, unverified. Since the construction of many dams, most reservoirs have become silted in to varying degrees. Although some dam owners have provided bathymetric survey data for their reservoir to the Department, the vast majority of owners have not and those that have done so rarely determined the depth of silt/sediment stored behind the dam, which is needed to quantify the total storage volume.

If reservoir storage is incorporated into the fee schedule, dam owners will become responsible for self-reporting their reservoir storage. Some dam owners do not have the expertise or the financial resources

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to outsource this task as required to make these determinations. It is possible that some owners may only report and be subject to the fee corresponding to the volume of water impounded behind their dam; not the total volume which includes silt/sediment. It is very difficult to measure or accurately determine the depth of the silt/sediment layer. This challenge will make it more difficult to prevent the storage determinations from becoming overly subjective and thus difficult for the Department to validate. Dam height determinations, in contrast, are more precise and already used by the Department to determine the jurisdictional status of a dam, and as discussed above, better correlate to the burden those dams pose on the program.

Alternative 3 – Added Component that incorporates Hazard Classification

This alternative was developed to evaluate an approach for lessening the financial burden to dam owners who own dams that the Department classifies as low hazard, and therefore, are only partially subject to the dam safety program enhancements that recently went into effect. There are approximately 315 dams, out of about 1,250 dams that fall within this category. Approximately 165 of these 315 low hazard classification dams qualify for the Reduced Rate as “small and private” (S&P) or “farm and ranch” (F&R) dams; the remaining 150 dams pay the General Fee Rate.

Owners of low hazard classification dams are not required in statute to submit inundation maps and emergency action plans (EAP) for their dams. Since the June 27, 2017 statutory amendments have a new requirement for the Department to review and approve inundation maps, the schedule of fees now contains an expansion budget cost component to cover the Department’s costs for this new work. The program expansion budget component also supports the reevaluations, starting first with spillways, which are being performed in response to Governor Brown’s 2017 directive. Recognizing that the effect of these program components on low-hazard dams will be less immediate and direct, the Department evaluated whether it would be appropriate to waive the expansion budget cost component for these owners of low hazard classification dams. Two variants were considered as part of this alternative: 1) a reduced rate for those that fall under the General Rate structure, hereafter referred to as “General Low Hazard” and 2) a reduced rate for all dams having a low hazard classification, hereafter referred to as “Low”. Both variants are summarized below.

A) Decreased Annual Fee Rate for Low Hazard Dams Under the General Rate “General Low” (about 150 dams)

This alternative would provide an immediate 28% decrease in the FY 2019 annual fee rates corresponding to the dam height and administrative fee components that “General Low” rate category owners would otherwise pay. Although this reduction would significantly help these owners, this alternative was not selected due to the impacts that would result to the overall regulatory program, in particular owners of the other 1,100 dams who would have to cover these costs. These other dam owners would be subject to an additional annual fee increase of more than 5% to maintain the 20% reduced fee rate structure mandated in statute for the S&P and F&R dams. This shift in burden may be considered significant by dam owners with limited financial resources. Further, as discussed below, a discounted rate for Low Hazard dams may not reflect a fair allocation of the impacts on the regulatory program.

Although it is recognized that owners of dams within the General Low rate category will not need to submit inundation maps to the Department for review and approval, the Department will still have to allocate significant time and resources to develop maps in-house to verify that the low downstream

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hazard rating given to them by the Department is valid from year to year. This work will also need to be ongoing, as regularly or possibly more frequently than that required in statute for the other dams to ensure the hazard rating of the dam does not change to significant or higher hazard classification. As part of this work, the Department will have to compile all map-related supporting documents rather than reviewing documents already compiled and submitted by the dam owner's engineer.

Also, because of legislation passed through AB 1270 on February 26, 2018, sections 6102 and 6103 of the Water Code require the Department to consult with independent dam safety and dam safety risk management organizations to propose additions to DSOD's existing Dam Safety Program to incorporate updated best practices to ensure public safety. Generally, any updates to the program associated with best practices will apply to all dams. The addition of best practices related to dam safety risk management will apply to the portfolio management of all jurisdictional dams, including low hazard dams that may periodically require the allocation of time and resources toward dams that historically did not warrant such focused attention; such as the General Low Hazard category dams. In addition, extra Department oversight is often required for many low hazard dams since their owners do not have the financial or technical resources to properly operate and maintain their dam or to retain experienced dam engineering consultants when they are needed. For these reasons, the costs incurred by the Department to implement the program's expansion are generally applicable to all dams and should be uniformly applied.

In addition, assessing the program costs based on hazard classification to dam owners is not equitable since the classification itself is heavily influenced by downstream development, which is determined by local government decisions rather than the dam owner's. If the fee structure incorporated downstream hazard classification, a dam owner whose "low" rating changes to significant or higher could potentially argue that it places an unfair financial burden on them since they have no control over the new downstream development that led to their new classification and an increased annual fee. However, these dam owners are financially responsible for upgrading their facilities to a higher design standard commensurate with the level of risk posed to the downstream communities.

B) Decreased Annual Fee Rate for Low Hazard Dams (about 315 dams)

Although this variant would help the 315 owners of low hazard dams, it too was rejected since it shifts a significant burden on the other three hazard class categories; i.e., significant, high, and extremely high. The basis for this decision is essentially the same as that described in Alternative 3A above, with a further consideration. If this option were selected, owners of low hazard dams that already qualify for the S&P and F&R reduced fees, which are limited to 20% of that of the general rate fee payers, would have a second, and rather significant, fee reduction. This reduction does not reflect a fair allocation of their impacts on the regulatory program, especially for the low hazard dams receiving both fee reductions. Again, the significant fee reduction for this class of dam owners would shift the costs to dam owners in other hazard classifications, and likely result in an unfair allocation of costs to implement the regulatory program.

9. Support for Determination of Adverse Economic Impact on Business

The Department has made the initial determination that the proposed regulatory action may potentially have significant statewide adverse economic impacts directly affecting businesses. The proposed regulation will provide the revenue needed for DSOD's Dam Safety Program and its mission of protecting life and property from the failure of a dam or its appurtenant structures. The core benefits of

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this proposed regulation are in public safety and environmental protection. The revenue generated by this proposed regulation generally supports: (1) maintenance inspections and surveillance monitoring; (2) reevaluation studies of existing dams; (3) inundation map reviews; (4) emergency and incident response; (5) enforcement actions; (6) public inquires and dam owner education; (7) budgetary loan repayments; and (8) a prudent reserve for economic uncertainties.

Dams subject to these regulations are owned by different business types, ranging from large investor-owned utilities to small businesses. The cost to comply with this regulation may be significant for some dam owners. The Department has, therefore, made an initial determination that the adoption of this regulation may have a potentially significant, statewide adverse economic impact directly affecting business. It is uncertain, though, whether the regulation will impact the ability of California businesses to compete with businesses in other states. The Department has incorporated parameters into the methodology, such as true-up, to lessen any adverse economic impact on business.

10. Consistency with Federal Law

As a state regulatory program with respect to dam safety, there are no Federal laws applicable to the proposed regulations.