

**DEPARTMENT OF WATER RESOURCES**

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Title 23  
Division 2. Department of Water Resources  
Chapter 1. Dams and Reservoirs  
Article 3. Annual Fee

**Notice of Proposed Rulemaking**

The Department of Water Resources (Department) is proposing to adopt regulations that define a methodology for establishing the annual schedule of fees pursuant to Water Code section 6307. The Department will conduct a public hearing at the time and place noted below to receive comments on the proposed regulations.

### Public Hearing

Interested members of the public may present comments on the proposed regulations orally or in writing at the hearing. The hearing will be held in accordance with the requirements in Government Code section 11346.8. The hearing details are as follows:

Date: Tuesday, January 8, 2019  
Time: 10 a.m.  
Location: California Natural Resources Building Auditorium  
1416 9th Street  
Sacramento, CA 95814

The hearing will commence at 10:00 a.m. and conclude after the last speaker has been heard. Attendees, especially those intending to testify at the hearing, are encouraged to arrive no later than 10:00 a.m. in the event few or no commenters testify and/or the testimony that is given is brief.

### Written Comment Period

Interested members of the public may submit comments by postal mail or email before the hearing. The public comment period for this regulatory action will begin on November 23, 2018. To be considered by the Department, written comments submitted before the public hearing must be submitted on or after November 23, 2018 and received no later than 5:00 pm on January 7, 2019 and must be addressed to the following:

Email:  
Marcelino Alcantar  
Division of Safety of Dams  
Marcelino.Alcantar@water.ca.gov  
(916) 227-4640

Postal Mail:  
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Please note that under the California Public Records Act (Government Code §6250 et seq.), written and oral comments, attachments, and associated contact information (e.g. address, phone, email, etc.) become part of the public record and can be released to the public upon request. The Department encourages members of the public to bring any suggestions for modification of the proposed regulation to the attention of staff before the hearing. The

Department requests, but does not require, that written and email statements on the proposed regulations be submitted at least 10 days before the hearing so that the Department has additional time to consider each comment.

## Authority and Reference

Water Code sections 6078 and 6307 authorize the Department to adopt the proposed regulations. In addition, the proposed regulation will interpret and make specific the provisions Water Code sections 6002, 6002.5, 6004.5, 6005, 6006, 6007, 6008, 6009, 6160, 6161, 6307, 6309, 6428, 6429.

## Informative Digest and Policy Statement Overview

Annual fees fund the Department's California Dam Safety Program, which 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 or recreate at dams, the consequences of a dam failure may be significant with respect to life loss, economic loss, and adverse environmental impacts.

## Summary of Existing Laws and Regulations

The Department's Division of Safety of Dams (DSOD) implements Part 1 of Division 3 of the Water Code, which is commonly referred to as the Dam Safety Program. To implement this program, the Department has adopted regulations that govern several aspects of the Dam Safety Program, including construction and enlargement of dams and fees. These regulations are contained in Title 23 of the California Code of Regulations, Division 2, Chapter 1.

In 2017, newly enacted law Senate Bill 92 (SB 92) amended Water Code section 6307, which 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.

Before SB 92 and beginning 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 2004, 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.

The Department has relied on Water Code section 6307 when developing the schedule of fees specifically required in section 6307(a)(1). 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. In addition, Water Code section 6307(a)(1) specifically requires the Department's schedule of fees to be adopted by regulation.

The proposed regulations ensure that the Dam Safety Program collects an adequate amount of revenue to support its annually appropriated budget and provide 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.

### Effect of Proposed Rulemaking

The proposed regulations 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.

### Differences from Comparable Federal Regulations

The Department determined that no Federal regulations were comparable with the proposed regulations.

### Objectives and Benefits of the Proposed Regulatory Action

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 clarifies provisions related to the payment of annual fees. 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 inoperative for annual fee billing

As mentioned in the Informative Digest of this notice, 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 or recreate at dams, the consequences of a dam failure may be significant with respect to life loss, economic loss, and adverse environmental impacts.

## Compatibility with Existing State Regulations

The Department has determined that this proposed regulation is not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the Department has concluded that these are the only regulations concerning “Annual Fees – Dam Safety program.

## Disclosures Regarding Proposed Action

The Department has made the following initial determinations:

### **Mandate on local agencies and school districts:**

The Department has determined that the proposed regulations will not impose a mandate on local agencies or school districts that is required to be reimbursed under part 7 (commencing with section 17500) of Division 4 of the Government Code. Dams may be owned by local agencies or school districts, and therefore, subject to the annual fees. However, the regulations apply to all dam owners, not exclusively to local agencies and school districts. The proposed regulations apply to all owners of state jurisdictional dams, which include both public and privately-owned dams. While the proposed regulations will impose costs on local agencies that own dams, the proposed regulatory action will not result in a reimbursable state-mandated program.

### **Cost or savings to any state agency:**

There are currently 47 jurisdictional dams owned by State government and the fiscal impact to these dams is estimated at \$1.3 million for FY 19/20 and \$1.2 million for FY 20/21. The annual savings provided to local government and State agencies consists of lower costs for responding to and recovering from dam-related incidents and emergencies. The savings associated with preventing or reducing the risk of dam failures offset the annual fees imposed on local and state agencies.

### **Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630:**

There are currently 608 dams owned by local government which may include local agencies (cities, counties, water agencies or authorities) that are subject to the proposed regulation. The fiscal impacts for FY 19/20 to local government are estimated at \$14.4 million and \$14.2 million for FY 20/21. No school districts will be affected by this regulation. As mentioned above, annual savings provided to local government and State agencies consists of lower costs for responding to and recovering from dam-related incidents and emergencies. The savings associated with preventing or reducing the risk of dam failures offset the annual fees imposed on local and state agencies.

**Other nondiscretionary cost or savings imposed on local agencies:** None.

**Cost or savings in federal funding to the state:** None.

## Documents Incorporated by Reference

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

## Mandated by Federal Law or Regulations

The proposed regulations are not mandated by federal law or regulations.

## Other Statutory and Legal Requirements

In February 2017, Governor Brown announced a 4-point plan to bolster dam safety and flood protection as outlined below. The Department's Dam Safety Program is implementing Items 2 and 3 with respect to dam safety.

1. Invest \$437 million in near-term flood control and emergency response actions by redirecting \$50 million from the General Fund and requesting a \$387 million Proposition 1 appropriation from the Legislature as soon as possible.
2. Require emergency action plans and flood inundation maps for state jurisdictional dams, except those classified as having low potential for downstream hazard.
3. Enhance California's existing dam inspection program.
4. Seek prompt regulatory action and increased funding from the federal government to improve dam safety.

## Housing Costs

The Department has made the initial determination that the proposed regulatory action will not have a significant effect on housing costs.

## Significant Statewide Adverse Economic Impact Directly Affecting Business, Including Ability to Compete

The Department has made the initial determination that the proposed regulatory action may potentially have significant statewide adverse economic impacts directly affecting businesses. DSOD regulates an estimated 591 privately owned dams owned by individuals and private businesses. Privately-owned dams are generally used in the following industries: water and energy supply, agriculture, and homeowner's associations. 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 considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations:

- i. The establishments of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- ii. Consolidation or simplification of compliance and reporting requirements for businesses.
- iii. The use of performance standards rather than prescriptive standards.
- iv. Exemption or partial exemption from the regulatory requirements for businesses.

## Statement of the Results of the Economic Impact Assessment (EIA)

The cost to comply with this regulation may be significant for some dam owners. Dam owners may downsize or alter their workforce as a result of the regulation and may create

jobs/businesses to meet new mandatory statutes. The Department does not anticipate any businesses being expanded; however, some dam owners may choose to discontinue use of the dam. 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 core benefits of this proposed regulation are in public safety, protection of property, 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.

Based on the above-mentioned analysis, the Department concludes that it is:

1. unlikely that the proposal will create jobs; however, it may eliminate jobs;
2. unlikely that the proposal will create businesses; however, it may eliminate businesses;
3. unlikely that the proposed regulation will result in the expansion of businesses currently doing business within the state.

### Cost Impacts on a Representative Person or Business

The economic impact over a 12-month period for private sector dam owners is expected to be approximately \$26 million of which \$5 million is private sector direct costs and an additional \$5 million in assumed indirect and induced costs, and \$16 million assumed as public sector induced and indirect costs.

The proposed regulation considers the height of each dam in determining the amount of the annual fee by dam. The initial cost impact on representative persons or businesses will differ amongst dam owners as the height of the dams owned by different entities varies in the inventory. Estimations of cost impacts for Fiscal Year 2019/20 based on the average dam height within specific categories are listed below:

- 1) An association would have, on average, an initial cost of \$16,675 for a 51-foot-high dam under the General Rate and \$1,823 for a 26-foot-high dam under the Reduced Rate.
- 2) A private company would have, on average, an initial cost of \$20,897 for a 64-foot-high dam under the General Rate and \$2,112 for a 31-foot-high dam under the Reduced Rate.
- 3) An individual owner would have, on average, an initial cost of \$9,697 for a 28-foot-high dam under the General Rate and \$1,931 for a 29-foot-high dam under the Reduced Rate.
- 4) Private trusts and estates would have, on average, an initial cost of \$6,013 for a 16-foot-high dam under the General Rate and \$2,464 for a 37-foot-high dam under the Reduced Rate.

### Business Reporting Requirements

The proposed regulation requires that a fee be paid on an annual basis, but no reports are required by this regulation.

## Effect on Small Business

Some dams that are subject to the annual fee are owned by small businesses, so the Department has determined that the proposed action affects small businesses.

## Alternatives Statement

The Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department

- would be more effective in carrying out the purpose for which the action is proposed,
- would be as effective and less burdensome to affected private persons than the proposed action, or
- would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

## Department Contact Persons and Availability of Documents

### Department Contact Persons

Questions regarding the proposed regulatory action may be directed to:

Marcelino Alcantar  
Division of Safety of Dams  
P.O. Box 942836  
Sacramento, CA 94236-0001  
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Backup contact person:  
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[Kristen.Martin@water.ca.gov](mailto:Kristen.Martin@water.ca.gov)

### Availability of Proposed Regulations

The Department has prepared an initial statement of reasons (ISOR) for the proposed regulations. This Notice, the ISOR, the express terms of the proposed regulation, and all information upon which the proposed regulations are based are available on the Department's website at [damsafety.water.ca.gov](http://damsafety.water.ca.gov).

If substantial changes are made to the proposed regulations, the full revised text will be made available on the website for at least 15 days prior to adoption. All subsequent regulatory documents, including the final statement of reasons, when completed, will be made available on the website.