

Revised Federal Water Act

Situation at the turn of the year

Until December 31, 2019, the maximum water interest rate is CHF 110 per kilowatt of gross output (CHF 110/kWbr) in accordance with current regulations, but this is limited until the end of 2019. When the revision of the Federal Water Act (FWA) comes into force on January 1, 2020, Art. 49 Para. 1bis FWA will be fulfilled, which contained the mandate for the Federal Council to submit a draft decree in good time to determine the maximum level of the water interest rate for the period after January 1, 2020. This would have completed a transitional period, which had lasted from 2011 to 2019, and would have introduced a real alternative to the current system for determining the water rate. According to the Federal Council's idea, this alternative would have consisted in introducing a new model according to which the maximum water interest rate should have consisted of a fixed part and a part dependent on the market price. However, the revised FWA now continues the current system unchanged and Art. 49 para. 1bis FWA contains a new transitional period until the end of 2024. From January 1, 2025, a new maximum water interest rate should apply.

Water interest as a public charge

The water interest rate is a public charge for the exclusive right to use a public body of water at a specific location exclusively for the production of electrical energy.

The maximum permissible water interest rate for a hydropower plant is calculated by multiplying the average gross mechanical output by the maximum water interest rate in accordance with the Federal Water Act (FWA). The average gross mechanical capacity of the water is calculated from

the usable gradient and the average usable water volume of a hydropower plant. The Federal Act only defines the calculation method and the maximum water interest rate of CHF 110/kWbr. Within the framework of these federal legal requirements, however, the cantons are free to determine the water interest rate applicable to them.

Retrospect

The cantons and the water and energy sectors were given the opportunity in 2016 to submit joint proposals for a new water interest rate system. However, their conversations ended in vain. Nevertheless, the Federal Council prepared a consultation draft in compliance with Art. 49 para. 1bis FWA. The plan was to lower the maximum water interest rate to CHF 80/kWbr for three years. It also discussed a flexible water interest rate model to be introduced thereafter and a reduction in the water interest rate for loss-making power plants.

However, the draft submitted for consultation by the Federal Council was criticized. The temporary reduction of the maximum water interest rate to CHF 80/kWbr - which would have corresponded to the level at the end of 2010 - did not prove capable of winning a majority. The discussion about making the water rate more flexible was welcomed in its main features, but judged to be premature. The majority of cantons and municipalities saw the reason for the financial deficits in the hydropower sector claimed by operators and energy supply companies in recent years not in the water interest rate, but in political and entrepreneurial wrong decisions. They were therefore in favor of maintaining the current maximum water interest rate.

Revision draft

In addition to the continuation of the current maximum water interest rate of CHF 110/kWbr until the end of 2024, the revised FWA now stipulates that new or considerably expanded or renewed hydropower plants that are subsidized with an investment contribution in accordance with Article 26 of the Energy Act will not have to pay water interest for ten years after commissioning or, in the case of expanded or renewed power plants, only for the additional gross output.

In addition, in the field of hydropower use at border waters, DETEC's responsibility for the relevant procedures and the Federal Council's responsibility for concluding international agreements in this area will be determined.

After a controversial discussion in the Council of States and the National Council, the idea that the law would already enshrine that the Federal Council would have to propose a flexible water interest rate for the period from 2025 did not find a majority. The first step was to await the revision of the Electricity Supply Act and further developments in the energy sector, as well as the planned electricity agreement with the EU.

Significance for mountain cantons

A majority of the cantons that are eligible as siting cantons for hydropower plants and benefit from water interest rates are mountain cantons such as Valais, Grisons, Ticino and Uri, but also the cantons Berne and Aargau. In total, the siting cantons and municipalities receive around 550 million Swiss francs in water interest annually. With the originally proposed reduction to 80 Swiss francs, revenues would have fallen to around 400 million Swiss francs.

Continuation of the existing maximum water interest rate at CHF 110/kWbr will avoid financial effects on the siting cantons. The exemption from water interest rates for new power plants and the reduction in water interest rates for considerably expanded or renewed power plants, which are each supported by investment contributions, will result in a reduction in future water interest income for ten years. In the long term or after ten

years of power plants subsidized in accordance with Art. 26 FEA, more water interest income can be expected.

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