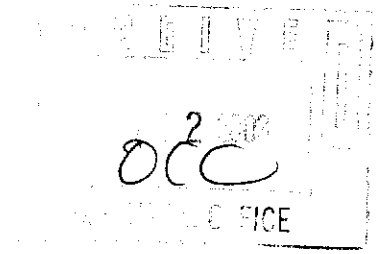




DEPARTMENT OF
FINANCE

ARNOLD SCHWARZENEGGER, GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV



December 3, 2003

Celeste Cantu
Executive Director
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Dear Ms. Cantu:

APPROVAL OF REQUEST FOR EXCEPTION UNDER EXECUTIVE ORDER S-2-03

Pursuant to paragraph 1 of Executive Order S-2-03, the Director of Finance hereby **approves** the request of the State Water Resources Control Board to continue the rulemaking process on the following regulatory action:

- Setting Fees for Water Right Administration
- Setting Fees for Operator Certification Program

DONNA ARDUIN, Director of Finance

By:

FRED KLASS, Program Budget Manager

MEMORANDUM

TO: Fred Klass
Budget Program Director
Department of Finance

Peter Siggins
Secretary for Legal Affairs
Governor's Office

VIA: Terry Tamminen
Secretary for California Environmental Protection Agency

FROM: Celeste Cantú
Executive Director
State Water Resources Control Board
Phone: (916) 341-5615
FAX: (916) 341-5621
Email: CCantu@exec.swrcb.ca.gov

DATE: November 26, 2003

SUBJECT: EXECUTIVE ORDER S-2-03, REGULATORY REVIEW
REQUEST FOR EXCEPTIONS

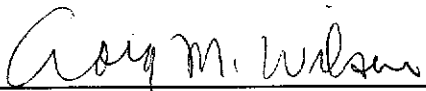
Attached for your approval is a request for two exceptions from Executive Order S-2-03 for State Water Resources Control Board regulations. As set forth in the attachment, the exceptions are warranted based on the exception criteria set forth in the Department of Finance's memo of November 20, 2003. These regulations are scheduled for adoption on December 15, 2003. Approval of the exceptions is requested before that date.

Attachment

Fred Kloss, et al.
November 26, 2003
Page 2

SUBJECT: EXECUTIVE ORDER S-2-03, REGULATORY REVIEW
REQUEST FOR EXCEPTIONS

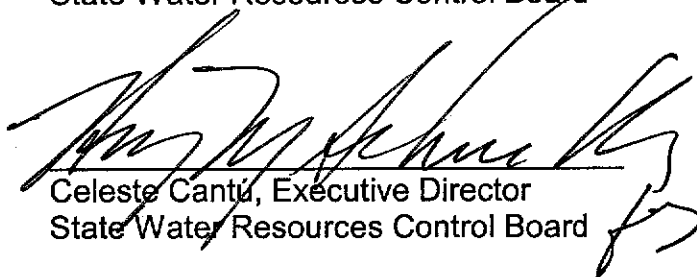
APPROVED:



Craig M. Wilson, Chief Counsel
State Water Resources Control Board

11/26/03

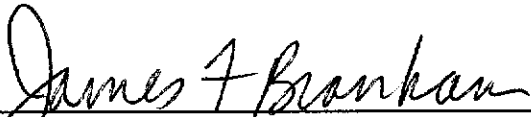
Date



Celeste Cantú, Executive Director
State Water Resources Control Board

11/26/03

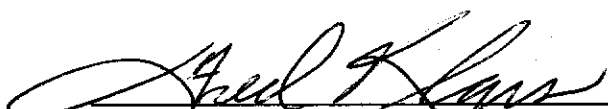
Date



Terry Tamminen, Secretary
California Environmental Protection Agency

11/26/03

Date



Fred Kloss, Budget Program Director
Department of Finance

12/3/03

Date

State Water Resources Control Board

Executive Office

Arthur G. Baggett Jr., Chair
1001 I Street • Sacramento, California 95814 • (916) 341-5615
Mailing Address: P.O. Box 100 • Sacramento, California • 95812-0100
Fax (916) 341-5621 • <http://www.swrcb.ca.gov>



Arnold Schwarzenegger
Governor



Terry Tamminen
Secretary for
Environmental
Protection

MEMORANDUM

TO: Terry Tamminen
Secretary for Environmental Protection

FROM: Celeste Cantú
Executive Director
EXECUTIVE OFFICE

DATE: November 19, 2003

SUBJECT: REQUEST FOR EXCEPTION FROM EXECUTIVE ORDER S-2-03
FOR STATE WATER RESOURCES CONTROL BOARD REGULATIONS
SETTING FEES FOR WATER RIGHT ADMINISTRATION AND TO
ADOPT WASTEWATER TREATMENT PLANT OPERATOR
CERTIFICATION FEE REGULATIONS

This request is for two exceptions from the Executive Order S-2-03 for the State Water Resources Control Board (SWRCB) regulations. One request covers setting fees for water right administration and is necessary for the reasons described below. The other request is to grant the SWRCB an exception to adopt permanent regulations increasing the fees for its operator certification program. In the alternative, the SWRCB requests that DOF grant an exception to the Executive Order so that the SWRCB may adopt the proposed operator certification fee regulations as emergency regulations. On behalf of the SWRCB, I respectfully request that the Department of Finance grant an exception to Executive Order S-2-03 for these regulations as expeditiously as feasible.

Our first request concerns regulations that are necessary to avoid a shutdown of the State's water right program, a program that is important to the protection of the public health, economy and environment of the State of California. The SWRCB has a mandatory legal duty to adopt the regulations pursuant to SB 1049 (Stats. 2003, ch. 741). In recognition of the importance of the water right program, SB 1049 specifies that the adoption of the regulations is an emergency and shall be considered by the Office of Administrative Law to be necessary for the preservation of the public peace, health, safety, and general welfare.

As part of the review of the 2003-2004 budget, the Legislative Analyst recommended that to help address the State's general fund shortfall, general fund support for the SWRCB's water right program be replaced by fees. The Legislative Analyst recommended that fees pay for half of the program in 2003-2004, and that the entire

California Environmental Protection Agency

program be fee supported in 2004-2005. The Budget Act of 2003 (Stats 2003, ch. 157) follows the Legislative Analyst's recommendation. The balance of the general fund support for the water right program was reduced by about half (not including funding added to start the fee program) and replaced with \$4.4 million from the Water Rights Fund, which had not yet been established. The Legislature later enacted SB 1049, which establishes the Water Rights Fund and requires the SWRCB to adopt emergency regulations setting a schedule of water right fees that generate revenues into the Water Rights Fund consistent with the amount specified in the budget. The SWRCB is proposing emergency regulations to meet the requirements of SB 1049. The SWRCB held two public hearings on the proposed regulations, and the deadline for public comment has expired. The proposed regulations and additional background information are available on the SWRCB's website at <http://www.waterrights.ca.gov/fees/default.htm>.

If the SWRCB does not adopt the emergency regulations, it will have to shut down the water right program. In practical effect, the budget provided general fund support for the first six months of the year, with fee support for the balance of the fiscal year. Continued administration of the water right program is essential to the economy and environment of the State of California. Without funding for the program, critical water transfers and changes in water project operations would not be approved, the security of water rights needed for the State's water supply projects would be undermined, and the environment would be threatened. New water supply projects for irrigation or municipal use, and modification of existing projects involving changes in permitted or licensed water rights, could not move forward. The water right program also is important to the protection of the public health. For example, the water right program applies and enforces Bay-Delta water quality standards that protect the drinking water supplies for 22 million Californians. Continued implementation of the water right program is also needed to prevent a federal takeover of key water allocation responsibilities where violation of water right requirements would affect endangered species.

Failure to adopt the emergency regulations would necessitate the Board requesting a deficiency appropriation until an orderly windown of the water right program could be accomplished.

Our second request concerns the adoption of permanent regulations increasing the fees for its operator certification program.

1. Background

Water Code Section 13628 requires the SWRCB's Wastewater Operator Certification Program to be self-supporting through fees charged to the regulated

community. Program expenses include examination preparation and grading, application review, printing and distribution of certificates, certificate renewals, enforcement, maintenance of a web site and other public outreach efforts. Because this is a general fund program, collecting fees commensurate with the costs administering the program also serves the purpose of avoiding additional pressures on the general fund.

Until recent emergency rulemakings described below, these fees were last increased in 1992. Over time, a large gap developed between fee-generated revenue and Program expenses. In October 2002, this serious financial problem caused the SWRCB to terminate the Program. However, the overwhelming request of operators and municipal agencies to continue the Program and raise fees to fully fund it caused the SWRCB to reverse its decision. On February 4, 2003, the SWRCB adopted an emergency regulation amending Section 3717, Title 23, of the California Code of Regulations (CCR) to increase the fees in order to adequately cover the costs of the Program. The Office of Administrative Law (OAL) approved the emergency regulation on March 11, 2003. On August 23, 2003, the OAL again approved the SWRCB's request to continue the increased fees on an emergency basis. This amendment expires on December 20, 2003.

To make the increased fees permanent, the SWRCB must complete an additional rulemaking process by December 20, 2003. Notice of the proposed permanent adoption was published on August 29, 2003 and sent to all certified operators. The comment period, including a public hearing, ended on October 20, 2003. The increase is considered non-controversial because only limited written comments were received and no one attended the hearing. At its regularly scheduled meeting on November 19, 2003, the SWRCB continued the adoption of the permanent regulations to its December 15, 2003 meeting due to the issuance of Executive Order S-2-03. A copy of the proposed regulations and additional background material is available at <http://www.swrcb.ca.gov/news/docs/noticepublished0803.doc> and <http://www.swrcb.ca.gov/agendas/2003/november/1119-01.doc>.

2. Effect of a Temporary Halt to the Rulemaking

As indicated above, the amendment setting the increased fee schedule must be approved by OAL by December 20, 2003. Otherwise, on December 21, 2003, the fees are rolled back to the schedule set in 1992. This rollback would have two major impacts.

a. Inequity to the Regulated Community

Approximately 1,300 operators are required to renew their certificates by December 31, 2003. The Program has processed renewal applications with the higher fees since early October. If the fees are reduced on December 21, the majority of operators will have paid almost double the amount paid by operators who renew during the last ten days prior to expiration of their certificate. This inequity is likely to cause extreme concern among operators and their employers.

b. Program Phaseout

If the regulation setting the higher fee schedule is not made permanent, fees to the Program will drop drastically beginning December 21. Fees collected from July 1 – December 31 are expected to be approximately \$240,000 and to drop to about \$167,000 from January 1 – June 30. Annual costs, however, are projected to be roughly \$550,000. Without continuation of the fees now in effect, the program will have to cease operation when it runs out of funds. Qualified operators will not be able to renew their certifications. Further, sewage treatment plants, which are legally required to have certified operators, will not be able to comply with the law.

Thank you for your attention to this matter. If you require additional information related to this request, please contact me or Bill Brown, Chief of Division of Administrative Services, State Water Resources Control Board, at (916) 341-5050.