

**State of California  
Office of Administrative Law**

**In re:**

**State Water Resources Control Board**

**Regulatory Action:**

**Title 23, California Code of Regulations**

**Adopt sections:**

**Amend sections: 1062, 1064, 1077, 3833.1**

**Repeal sections:**

**NOTICE OF APPROVAL OF EMERGENCY  
REGULATORY ACTION**

**Government Code Section 11349.6**

**OAL File No. 2008-1030-02 E**

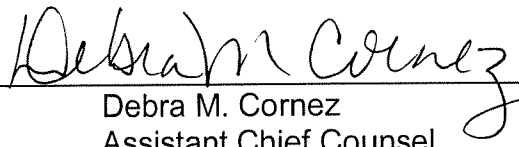
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On October 7, 2008, the State Water Resources Control Board adopted Resolution 2008-0074, which revised the emergency water right and water quality certification fee regulations and schedules to be consistent with the revenue levels set forth in the Budget Act for Fiscal Year (FY) 2008-2009. Under the Water Code and existing regulations, a person filing a water right application, petition, registration, or other filing, must pay a filing fee to the State Water Board. Existing regulations also establish annual fees for water right permits, licenses, water leases, and applications for water quality certification under Clean Water Act (CWA) section 401 for an activity that involves a hydroelectric facility licensed by the Federal Energy Regulatory Commission (FERC). In general, these emergency regulations would adjust the fee schedule to (1) reduce fees for most applications for temporary permits filed under Water Code section 1426; (2) increase the limit on filing fees for the largest (in terms of quantity of water to be appropriated or transferred) applications, petitions, and water transfers; and (3) increase annual fees for projects under review for CWA section 401 certification in connection with FERC licensing and for projects issued FERC licenses. The proposed fee schedule will result in no change in the annual fees from FY 2007-2008 for water right permits and licenses; accordingly, fees for most of the current water right fee payers would remain unchanged. The proposed revision will also amend the requirements for petitions for reconsideration.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 11/5/2008 and shall remain in effect until revised by the State Water Resources Control Board pursuant to Water Code sections 1530 and 13160.1.

Date: 11/5/2008

  
Debra M. Cornez  
Assistant Chief Counsel

For: SUSAN LAPSLEY  
Director

Original: Dorothy Rice  
Copy: Erin Mahaney

# EMERGENCY

STATE OF CALIFORNIA—OFFICE OF ADMINISTRATIVE LAW

## NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 4-99)

<b>OAL FILE NUMBERS</b>	NOTICE FILE NUMBER <b>Z-</b>	REGULATORY ACTION NUMBER	EMERGENCY NUMBER <b>2008-1030-02E</b>
For use by Office of Administrative Law (OAL) only		2008 OCT 30 PM 3:36	
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY State Water Resources Control Board			AGENCY FILE NUMBER (if any)

### A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER ( )	FAX NUMBER (Optional) ( )
<b>OAL USE ONLY</b>	ACTION ON PROPOSED NOTICE: <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Amended <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER

### B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Emergency Fee Regulations to conform with Budget Act 2008-09	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) File Nos. 05-1011-06E, 04-1006-02E & 03-1216-01E
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#### 2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics-related)

SECTION(S) AFFECTED (List all section number(s) individually)	ADOPT
	AMEND Title 23, Sections 1062, 1064, 1077, and 3833.1
	REPEAL
TITLE(S) 23 CCR, Div. 3	

#### 3. TYPE OF FILING

Regular Rulemaking (Gov. Code, § 11346)    
 Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code, §§ 11349.3, 11349.4)    
 Emergency (Gov. Code, § 11346.1(b))    
 Emergency Readopt (Gov. Code, § 11346.1(h))    
 Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, § 11346.1)

Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Government Code §§ 11346.2 - 11346.9 prior to, or within 120 days of, the effective date of the regulations listed above.

Print Only    
 Changes Without Regulatory Effect (Cal. Code Regs., title 1, § 100)    
 Other (specify) \_\_\_\_\_

#### 4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §§ 44 and 45)

#### 5. EFFECTIVE DATE OF REGULATORY CHANGES (Gov. Code, §§ 11343.4, 11346.1(d))

Effective 30th day after filing with Secretary of State    
 Effective on filing with Secretary of State    
 Effective other (Specify) \_\_\_\_\_

#### 6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

Department of Finance (Form STD. 399) (SAM §6660)    
 Fair Political Practices Commission    
 State Fire Marshal

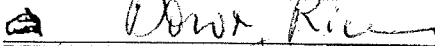
Other (Specify) \_\_\_\_\_

7. CONTACT PERSON Erin Mahaney	TELEPHONE NUMBER (916) 341-5187	FAX NUMBER (Optional) (916) 341-5199	E-MAIL ADDRESS (Optional) emahaney@waterboards.ca.gov
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8.

I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE



TYPED NAME AND TITLE OF SIGNATORY

Dorothy R. Rice, Executive Director

DATE OCT 16 2008

**STATE WATER RESOURCES CONTROL BOARD  
EMERGENCY REGULATIONS**

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

*Amend the following section:*

**§ 1062. Filing Fees for Water Right Applications.**

(a) A person who files a water right application shall pay to the board a filing fee as follows:

(1)(A) Except as provided in subparagraphs (B) and (C), the fee for a water right application shall be \$1,000, plus \$15 for each acre-foot that the applicant seeks to divert in excess of 10 acre-feet. The total fee shall not exceed ~~\$410~~40,000, plus any additional fee due pursuant to subparagraphs (2) and (3).

(B) At a facility where a small hydroelectric generating facility meets the criteria for a Class 28 categorical exemption under the California Environmental Quality Act, as established in California Code of Regulations, title 14, section 15328, the fee shall be \$1,000.

(C) The fee for an application for a temporary permit filed under Water Code section 1425 shall be the greater of either (i) 50 percent of the fee calculated under subparagraph (A), above, or (ii) \$2,000; except that the fee for an application for a temporary permit at a small hydroelectric generating facility that meets the criteria for a Class 28 categorical exemption under the California Environmental Quality Act, as established in California Code of Regulations, title 14, section 15328, shall be \$1,000. The filing fee includes the annual permit fee if a temporary permit is issued.

(2) If a water right application is accompanied by a petition to revise a declaration of fully appropriated stream systems, then \$10,000 shall be added to the fee.

(3) If a water right application is accompanied by a petition for assignment of a state-filed application pursuant to Water Code section 10504, then \$5,000 shall be added to the fee.

(b) A person who filed a water right application on or after July 1, 2003, and prior to January 1, 2004, shall pay a supplemental filing fee equal to the difference between the filing fee already paid and the amount due pursuant to the regulation in effect on January 1, 2004.

(c) The application filing fee includes a non-refundable \$250 initial review fee.

Authority: Sections 1058 and 1530, Water Code.

Reference: Sections 1425, 1426, 1525 and 1535, Water Code.

*Amend the following section:*

**§ 1064. Filing Fees for Petitions or Requests.**

(a) A person who files a petition or a request for release from priority shall pay to the board a filing fee for each water right application, permit or license covered by the petition or request in accordance with this section.

(1) For purposes of calculating the filing fee, a petition to change one or more terms of a single application, permit, license, or other water right shall be considered a single petition, provided that action can be taken on the changes simultaneously, except that a petition for an extension of time shall be considered a separate petition, subject to a separate fee, from a petition to change one or more other terms in a water right. A petitioner requesting changes to more than one application, permit, license, or other water right shall file a separate petition or petitions for each water right and a filing fee shall be required for each petition. A separate filing fee shall be required for each change petition subsequently filed on a water right that is already the subject of a pending petition for change.

(A) Except as provided in subparagraphs (i), (ii), and (iii), the fee for a petition to change the terms of an application, permit or license shall be as follows. The fee shall be a minimum of \$1,000. If the total annual amount of diversion sought by the pending application or authorized by the permit or license, as calculated in accordance with section 1066, is greater than 10 acre-feet, then the petitioner shall pay an additional \$0.30 for each acre-foot in excess of 10 acre-feet. The total fee shall not exceed ~~\$5,150~~\$525.

(i) The fee for a petition for change pursuant only to Water Code section 1707 shall be \$850.

(ii) The fee for a change petition involving a transfer of water pursuant to Water Code section 382, 1701, 1725, or 1735 shall be \$2,000, plus \$0.30 for each acre-foot that the petitioner seeks to transfer in excess of 10 acre-feet. The fee shall be based on the maximum amount of water proposed to be transferred annually, not the amount of water proposed to be transferred over the entire term of the transfer. The total fee shall not exceed ~~\$410~~\$40,000.

(iii) The fee for a petition for extension of time shall be \$1,000.

(2) The fee for a petition to change the point of discharge, place of use, or purpose of use of treated wastewater pursuant to Water Code section 1211 shall be \$1,000.

(3) The fee for a request for release from priority of a state-filed application pursuant to Water Code section 10504 shall be \$5,000.

(4) The fee for a petition filed pursuant to Water Code section 1228.7 to change the point of diversion or place of use under a registration of an appropriation for small domestic or livestock stockpond use shall be \$250.

(b) A person who filed a petition or a request for release from priority on or after July 1, 2003, and prior to January 1, 2004, shall pay a supplemental filing fee equal to the difference between the filing fee already paid and the amount due pursuant to the regulation in effect on January 1, 2004.

(c) The petition filing fee includes a non-refundable \$250 initial review fee.

Authority: Sections 1058 and 1530, Water Code.  
Reference: Sections 386, 1525 and 1535, Water Code.

*Amend the following section.*

**1077. Petition for Reconsideration.**

(a) The board's determination that a person is required to pay a fee, or determination regarding the amount of the fee, shall be subject to reconsideration under chapter 4 (commencing with Section 1120) of part 1 of division 2 of the Water Code. Any petition for reconsideration shall be submitted by the fee payer in accordance with that chapter and article 12 (commencing with section 768) of chapter 2 of division 3 of this title.

(1) The petition also shall specify why the petitioner believes that no fee is due or how the petitioner believes that the amount of the fee has been miscalculated.

(2) A petition for reconsideration of a fee assessed by the State Board of Equalization must include either a copy of the notice of assessment or all of the following information:

(A) The fee payer's name;

(B) The water right or State Board of Equalization identification number;

(C) The amount assessed; and

(D) The billing period or assessment date.

(b) If the subject of a petition for reconsideration relates to an assessment by the State Board of Equalization, the board's decision regarding an annual fee shall be deemed adopted on the date of assessment by the State Board of Equalization. A petition for reconsideration is timely filed only if the board receives the petition within 30 days of the date the assessment is issued.

(c) The State Board of Equalization shall not accept a petition for reconsideration of the board's determination that a person is required to pay a fee, or the amount of the fee. If the State Board of Equalization receives any petition for reconsideration, it shall promptly forward the petition to the board.

Authority: Sections 1058 and 1530, Water Code.  
Reference: Sections 1120 and 1537, Water Code.

*Amend the following section:*

**3833.1. Annual Fees for FERC Licensed Hydroelectric Projects.**

(a) Each applicant seeking water quality certification for an activity that includes, or involves construction or modification of facilities for the purpose of, producing hydroelectric power, where the activity or facilities require the issuance or amendment of a FERC license, shall pay an annual fee in accordance with this section.

(b)(1) An annual fee calculated pursuant to paragraphs (4) and (5) shall apply in each fiscal year (July 1 through June 30) during or after the year in which review in anticipation of consideration of certification is initiated as specified in paragraph (2) and until and including the fiscal year in which certification and related federal proceedings are complete as specified in paragraph (3).

(2) Review in anticipation of consideration of certification shall be deemed to have been initiated when any of the following occurs or has occurred:

(A) A notice of intent is filed pursuant to 18 CFR § 5.5 or 18 CFR § 16.6.

(B) Consultation is initiated pursuant to 18 CFR § 4.38.

(C) An application for water quality certification is filed.

(3) Certification and related proceedings shall be deemed to have been completed when any of the following occurs:

(A) FERC issues or denies the license or license amendment for which review in anticipation of consideration of certification was initiated.

(B) FERC determines that no license, other than a license already in effect, or license amendment is required.

(C) The applicant abandons the proposed activity, including withdrawal or voluntary surrender of any applicable notification of intent, FERC preliminary permit, FERC license application, or other application for FERC approval or FERC license.

(4) The annual fee shall be \$1,000 plus ~~\$0.13~~\$0.220 per kilowatt, based on the authorized or proposed installed generating capacity of the hydroelectric facility.

(A) In the case of an application for an original, new or subsequent license, as those terms are used in Parts 4, 5 and 16 of Title 18 of the CFR, the annual fee shall be based on the installed generating capacity of the facility as proposed in the notification of intent, application for FERC license, application for certification, or existing license that is proposed for takeover or relicensing, whichever is greatest.

(B) In the case of a proposed amendment to an existing FERC license, the component of the fee based on installed generating capacity shall be based on the amount by which the installed generating capacity of the hydroelectric facility would be increased by the proposed amendment.

(5) If an applicant for certification has paid any deposit pursuant to subdivision (b) of section 3833 as that subdivision was in effect before January 1, 2004, the state board shall credit against the annual fee specified in paragraph (4) any portion of that deposit that was for costs incurred after June 30, 2003. If an applicant for certification was required to pay but did not pay any deposit pursuant to subdivision (b) of section 3833 as that subdivision was in effect before January 1, 2004, the annual fee shall include any unpaid deposit, less any portion of that unpaid deposit that was for costs incurred after June 30, 2003, in addition to the annual fee specified in paragraph (4).

(6) If an application for certification is filed for an activity for which no annual fees have previously been imposed, the annual fee shall be due upon filing of the application for certification, and shall be paid to the state board. In all other cases, the annual fee shall become due thirty days after the State Board of Equalization gives notice of the fee, and shall be paid to the State Board of Equalization.

(c)(1) The holder of any FERC license for a hydroelectric project for which water quality certification has been issued shall pay an annual fee in the amount of \$100 plus \$0.017 per kilowatt, based on the authorized installed generating capacity of the hydroelectric project.

(2) The fee imposed under this subdivision shall not apply in the fiscal year when the FERC license is issued if an annual fee is imposed in that fiscal year pursuant to subdivision (b).

(3) The annual fee imposed under this subdivision shall be due thirty days after the State Board of Equalization gives notice of the fee, and shall be paid to the State Board of Equalization.

(d)(1) A determination by the state board that an applicant is required to pay a fee under this section or paragraph (1) of subdivision (b) of section 3833, and any determination by the state board regarding the amount of that fee, is subject to review under chapter 4 (commencing with Section 1120) of part 1 of division 2 of the Water Code. Any petition by an applicant to the state board for review shall be submitted in accordance with that chapter and article 12 (commencing with section 768) of chapter 2 of division 3 of this title.

(2) If the subject of a petition for reconsideration relates to an annual fee, other than an annual fee first required to be paid pursuant to paragraph (1) of subdivision (b) of section 3833, the board's decision regarding an annual fee shall be deemed adopted on the date of assessment by the State Board of Equalization. The petition must be received by the board within 30 days of the date of assessment by the State Board of Equalization.

Authority: Section 13160.1, Water Code.

Reference: Section 13160.1, Water Code.