

**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, 1063, 1064, 1066,
1068

Repeal sections:

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6**

OAL Matter Number: 2018-1023-03

OAL Matter Type: Emergency (E)

On September 20, 2018, the State Water Resources Control Board adopted, pursuant to Water Code section 1525(d), Resolution 2018-0043, which revises, via these emergency regulations, various water rights fees so as to ensure revenue in an amount equal to the amounts appropriated by the Legislature for expenditure for support of water rights program activities.

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 11/1/2018 and will remain in effect until revised by the Board pursuant to Water Code section 1530.

Date: November 1, 2018


Dale P. Mentink
Senior Attorney

For: Debra M. Cornez
Director

Original: Eileen Sobeck, Executive
Director

Copy: David Ceccarelli

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

EMERGENCY

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS Z-	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER 2018-1023-03E	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

NOTICE	REGULATIONS
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ENDORSED - FILED
In the office of the Secretary of State
of the State of California

NOV 01 2018
1:33 pm

AGENCY WITH RULEMAKING AUTHORITY State Water Resources Control Board	AGENCY FILE NUMBER (if any) Resolution No. 2018-0043
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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)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER
			PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Emergency Regulation Amending FY 2018-19 Water Rights Fee Schedule	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 17-1027-04E, 16-1221-01E, 16-1028-01E, 16-0107-01E,
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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. Attach additional sheet if needed.)	ADOPT
	AMEND 1062, 1063, 1064, 1066, and 1068
	REPEAL
TITLE(S) 23	

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> 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 Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM 56660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON David Ceccarelli	TELEPHONE NUMBER 916-341-5999	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) david.ceccarelli@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 	DATE 10/15/18
TYPED NAME AND TITLE OF SIGNATORY Eileen Sobeck, Executive Director	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED
NOV 01 2018
Office of Administrative Law

23 CCR § 1062

§ 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) through (E), 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 ~~\$518,899~~534,155, 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, other than a permit described in subparagraph (D) or (E) of this subdivision, shall be the greater of either (i) 50 percent of the fee calculated under subparagraph (A), above, or (ii) \$2,000.

(D) The fee for an application for a temporary permit under Water Code section 1425 for 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.

(E) The fee for an application for a temporary permit, ~~or renewal of a temporary permit,~~ filed under Water Code section 1425 that is solely for purposes of diverting water from high flow events to underground storage for later beneficial use shall be the lesser of either (i) the fee calculated pursuant to subparagraph (C), above, or (ii) \$1005,000 plus \$1,000.10 for every 100 acre-feetacre-foot of water the applicant diverts to underground storage under the permit in excess of 10,000 acre-feetapplied for. For renewal of a temporary permit issued pursuant to this subparagraph, where the renewal proposes an identical project and is filed within one year of issuance of the prior temporary permit, the fee for renewal of a temporary permit shall be \$1,500 plus \$0.20 per acre-foot of water actually diverted under the renewed temporary permit. The portion of the application fee based on the amount diverted shall be due within 30 days of actual diversion, and shall be accompanied by a report of the amount actually diverted.

(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 initial review fee of \$250 or the amount of the application fee, whichever is less.

Note: Authority cited: Sections 1058 and 1530, Water Code. Reference: Sections 1425, 1426, 1525, 1535 and 1551, Water Code.

23 CCR § 1063

§ 1063. Annual Fees for Water Right Applications.

Under any of the following circumstances, a water right applicant shall pay an annual fee, ~~as set forth in section 1066~~ of \$750 plus \$0.073 for each acre-foot in excess of 10 acre-feet, calculated as described in section 1066, subdivision (b).

- (a) The diversion of water, the construction of diversion works, or the clearing of land where the diverted water will be used or stored, has been initiated before a permit is issued authorizing the diversion.
- (b) The applicant requests the board to delay processing the water right application.
- (c) The applicant is a lead agency under the California Environmental Quality Act (CEQA) (commencing with Public Resources Code section 21000) and has not adopted or certified a final environmental document for the project for which the application is filed, as may be required under CEQA, within two years after the board first provides notice of the water right application.
- (d) The applicant fails to provide supplemental information requested pursuant to Water Code section 1275 within the time period provided.
- (e) ~~The Chief, Division of Deputy Director for Water Rights,~~ has determined that a permit may be issued for the project, but the applicant has not paid filing fees required under Public Resources Code section 10005, Fish and Game Code section 711.4, or other law.

Note: Authority cited: Sections 1058 and 1530, Water Code. Reference: Sections 1525, 1536 and 1537, Water Code.

23 CCR § 1064

§ 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), (iii) and (iv), 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 ~~\$6,518,671.0~~ \$6,518,671.0.

(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, 1435, 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 ~~\$518,899~~ \$534,155.

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

(iv) The fee for a petition for issuance of separate permits or licenses pursuant to section 836, where there are no changes to the authorized point of diversion, place of use, purpose of use, or any other material term of the permit or license other than as necessary for the split, shall be \$850.

(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 stock pond use shall be \$500.

(5) 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 irrigation use shall be \$750.

(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.

Note: Authority cited: Sections 1058 and 1530, Water Code. Reference: Sections 386, 1228.7, 1525 and 1535, Water Code.

23 CCR § 1066

§ 1066. Annual Fees for Permits or Licenses.

(a) A person who holds a water right permit or license shall pay a minimum annual fee of ~~\$150~~225. If the total annual amount of diversion authorized by the permit or license is greater than 10 acre-feet, then the permittee or licensee shall pay an additional ~~\$0.0690~~.073 for each acre-foot in excess of 10 acre-feet.

(1) For permits or licenses issued prior to the beginning of the year for which the fee is imposed, the board shall calculate annual fees according to the total annual amount of diversion authorized by the permit or license as of the beginning of the year.

(2) The board shall calculate annual fees for permits issued on or after the beginning of the year according to the total annual amount of diversion authorized by the permit as issued by the board.

(b) The board shall calculate the annual fee based on the total annual amount of diversion authorized by the permit or license, without regard to the availability of water for diversion or any bypass requirements or other conditions or constraints that may have the practical effect of limiting diversions but do not constitute a condition of the permit or license that expressly sets a maximum amount of diversion.

(1) If the permit or license does not expressly identify the total annual amount of diversion, the board shall calculate the total annual amount based on the rate of authorized diversion multiplied by the length of time in the authorized season of diversion.

(2) If the permit or license contains an annual diversion limitation that is applicable only to that permit or license, and the limitation is less than the calculated diversion volume, the fee shall be based on the amount specified in the limitation.

(3) If a person holds multiple water rights that contain an annual diversion limitation that is applicable to the combination of those rights, but the person may still divert the full amount authorized under a particular right, then the fee shall be based on the total annual amount for that individual right.

Note: Authority cited: Sections 1058 and 1530, Water Code. Reference: Sections 1525, 1536 and 1537, Water Code.

23 CCR § 1068

§ 1068. Registration Fees for Small Domestic, Livestock Stockpond and Small Irrigation Uses Registrations.

- (a) A person who registers an appropriation of water for small domestic, or livestock stockpond or small irrigation, other than irrigation use for cannabis, use pursuant to Water Code section 1228.3 shall pay to the board a non-refundable registration fee of \$250.
- (b) A person who renews such ~~Each holder of a registration, other than for irrigation use for cannabis, for small domestic or livestock stockpond use issued pursuant to Water Code section 1228.5 shall pay to the board an annual renewal fee in each year after the registration was first registered of \$100 as follows:~~
- (1) In fiscal year 2018-19, \$50.
 - (2) In fiscal year 2019-20, \$75.
 - (3) In fiscal year 2020-21, \$100.
 - (4) For a small domestic use registration held by a low-income resident for purposes of providing water for human consumption, cooking and sanitary purposes, the annual fee shall be reduced by 20 percent.
 - (5) For purposes of this section, a low-income resident is: (A) someone whose household income is 200 percent or less of federal poverty level; or (B) someone who is enrolled in a qualified public assistance program.
 - (6) Any holder of a small domestic use registration who submits adequate substantiation of eligibility for the annual fee reduction pursuant to paragraph (4), above, during fiscal year 2018-19, shall receive a credit on their fiscal year 2019-20 bill in the amount of any overpayment.
 - (7) For any holder of a small domestic use registration who submits adequate substantiation of eligibility for the annual fee reduction pursuant to paragraph (4), above, after fiscal year 2018-19, the reduction shall take effect in the subsequent fiscal year.
 - (8) For livestock stockpond use, the maximum annual fee for a single primary owner holding 5 or more registrations shall be as follows:
 - (A) In fiscal year 2018-19, \$250.
 - (B) In fiscal year 2019-20, \$375.
 - (C) In fiscal year 2020-21, \$500.
- (c) A person who registers an appropriation of water for small irrigation use other than for irrigation use for cannabis shall pay to the board a non-refundable registration fee of \$750.
- (d) A person who registers an appropriation of water for small irrigation use other than for irrigation use for cannabis shall pay to the board an annual fee of \$100 in each year after the registration was first registered.
- (e) A person who registers an appropriation of water for small irrigation use pursuant to Water Code section 1228.3, for which cannabis cultivation is an intended use, shall pay to the board a non-refundable annual fee of \$750.

Note: Authority cited: Sections 1058 and 1530, Water Code. Reference: Sections 1228.3, 1228.5, and 1525, Water Code