

**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, 1066

Repeal sections:

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6**

OAL File No. 2011-1014-02 E

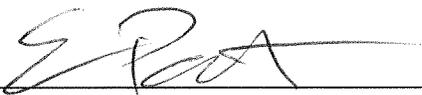
On September 19, 2011, the State Water Resources Control Board (Board) adopted Resolution 2011-0043, which revised the emergency water right fee regulations and schedules to be consistent with the revenue levels set forth in the Budget Act for Fiscal Year (FY) 2011-2012. Under the Water Code and existing regulations, a person filing a water right application, petition, registration, groundwater recordation, or other filing must pay a filing fee to the Board. Existing regulations also establish annual fees for water right permits, licenses, water leases, and applications for water quality certification under Clean Water Act section 401 for an activity that involves a hydroelectric facility licensed by the Federal Energy Regulatory Commission. In addition, the existing regulations establish requirements for filing a petition for reconsideration of a fee determination made by the Board.

In general, these emergency regulations modify the water right fee schedule to (1) adjust the caps on application and petition filing fees based on changes in the consumer price index, (2) increase the minimum flat-rate charge from \$100.00 to \$150.00 for annual fees assessed on water right permits, and (3) increase the per acre-foot charge from \$0.03 to \$0.05 per acre-foot for annual fees assessed on water right permits, licenses, water leases, and pending applications diverting over 10 acre-feet annually.

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 10/20/2011.

Date: 10/20/2011



Eric Partington
Staff Counsel

For: DEBRA M. CORNEZ
Assistant Chief Counsel/Acting Director

Original: Thomas Howard
Copy: Robert Rinker

EMERGENCY

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2011-1014-02E
------------------	---------------------------------	--------------------------	--

For use by Office of Administrative Law (OAL) only

2011 OCT 14 AM 9:57

OFFICE OF
ADMINISTRATIVE LAW

2011 OCT 20 PM 1:20


 JAMES BOWEN
 SECRETARY OF STATE

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 <input type="checkbox"/> 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 Fee Regulations to Conform with Budget Act 2011-12	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 10-1109-05E, 09-1015-01E, 08-1030-03E, 05-1011-06E
--	--

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 Title 23, Division 3, Chapter 5, section 1062, 1064, 1066
	REPEAL
TITLE(S) Title 23 CCR, Div 3	

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 30th day after filing with Secretary of State	<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) _____
--	---	--	--

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 §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON

Robert Rinker

TELEPHONE NUMBER

(916) 322-3143

FAX NUMBER (Optional)

(916) 341-5400

E-MAIL ADDRESS (Optional)

rrinker@waterboards.ca.gov

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

10/4/2011

TYPED NAME AND TITLE OF SIGNATORY

Thomas Howard, Executive Director, State Water Resources Control Board

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

OCT 20 2011

Office of Administrative Law

**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 ~~\$454,823~~ \$460,281, 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 cited: 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 ~~\$6,743~~ \$5,782.

(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 ~~\$454,823~~ \$460,281.

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

Amend the following section:

§ 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 ~~\$100~~ \$150. 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 ~~\$0.03~~ \$0.050 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.

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