

**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, 3833.1**  
**Repeal sections:**

**NOTICE OF APPROVAL OF EMERGENCY  
REGULATORY ACTION**

**Government Code Sections 11346.1 and  
11349.6**

**OAL File No. 2010-1109-05 E**

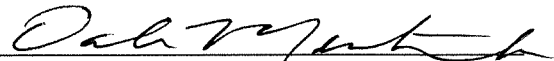
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This California Water Code Sections 1530 and 13160.1 emergency rulemaking action is the annual adjustment of water rights fees paid by state, local and private entities so as to conform to the revenue levels set by the annual budget act. This rulemaking action decreases slightly the fee caps on application and petition fees, removes reference to the one-time credit which fee-paying entities received under the 2009-1010 budget act, and increases the per kilowatt fee charged for projects licensed or undergoing licensing by the Federal Energy Regulatory Commission for activities that involve hydroelectric facilities.

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 11/17/2010 and shall remain in effect until revised by the State Water Resources Control Board pursuant to California Water Code Sections 1530 or 13160.1, as the case may be.

Date: 11/17/2010



Dale P. Mentink  
Senior Staff Counsel

For: SUSAN LAPSLEY  
Director

Original: Thomas Howard  
Copy: Bob Rinker

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-</b>	REGULATORY ACTION NUMBER	EMERGENCY NUMBER <b>2010-1109-05E</b>
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ENDORSED FILED  
IN THE OFFICE OF  
2010 NOV 17 PM 2:10  
*Debra Bowen*  
DEBRA BOWEN  
SECRETARY OF STATE

For use by Office of Administrative Law (OAL) only

2010 NOV -9 11 3:59  
OFFICE OF ADMINISTRATIVE LAW

NOTICE	REGULATIONS
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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)
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 2010-11	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 09-1015-01E, 08-1030-03E, 05-1011-06E, 04-1005-02E
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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 Title 23, Sections 1062, 1064, 1066 & 3833.1
TITLE(S) Title 23 CCR, Div 3	REPEAL

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

7. CONTACT PERSON Bob Rinker	TELEPHONE NUMBER (916) 322-3143	FAX NUMBER (Optional) (916) 341-5400	E-MAIL ADDRESS (Optional) rrinker@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 <i>Thomas Howard</i>	DATE 10/29/2010
TYPED NAME AND TITLE OF SIGNATORY Thomas Howard, Executive Director	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED  
NOV 1 2010  
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 ~~\$454,960~~ \$454,823, 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 ~~\$5,745~~ \$5,713.

(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 ~~\$454,960~~ \$454,823.

(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. 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 for each acre-foot in excess of 10 acre-feet. ~~To adjust for higher than anticipated one-time fee revenues in previous years and lower than budgeted expenditures as a result of furloughs, the permittee or licensee shall receive a one-time credit in the fiscal year 2009-10 billing cycle in the amount of \$0.007 for each acre-foot by which the annual diversion authorized by the permit or license is greater than 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.

*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 surrender of any applicable notification of intent, FERC preliminary permit, FERC license application, or other application for FERC approval.

(4) The annual fee shall be \$1,000 plus \$0.220342 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 \$0.047125 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 cited: Section 13160.1, Water Code

Reference: Section 13160.1, Water Code.