

NOTICE PUBLICATION/REGULATION SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01/2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2019-1017-03E
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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

OCT 28 2019
1:36 pm

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 ☐ Notice re Proposed Regulatory Action ☐ Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY ☐ Approved as Submitted ☐ Approved as Modified ☐ Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE	

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Emergency Regulation Amending FY 2019-20 Water Rights Fee Schedule	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 18-1023-03E, 17-1027-04E, 16-1221-01E, 16-1028-01E,
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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, 1065, 1066, 1068, and 3833.1
	REPEAL

3. TYPE OF FILING

☐ Regular Rulemaking (Gov. Code §11346)	☐ 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.	☐ Emergency Readopt (Gov. Code, §11346.1(h))	☐ Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
☐ Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	☐ Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	☐ File & Print	☐ Print Only
☒ Emergency (Gov. Code, §11346.1(b))		☐ 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)**

☐ Effective, January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	☒ Effective on filing with Secretary of State	☐ \$100 Changes Without Regulatory Effect	☐ 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

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

7. CONTACT PERSON John Weir	TELEPHONE NUMBER 916-341-5135	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) john.weir@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

Elleen Sobock, Executive Director

10/9/19

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

OCT 28 2019

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) 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 ~~\$534,155~~\$53,919, 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 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) \$5,000 plus \$0.10 for every acre-foot of water applied 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.

(F) The fee for an application for an appropriative right to divert water to underground storage that meets the criteria of this subparagraph shall be 75 percent of the fee calculated pursuant to subdivision (a)(1)(A). To be eligible for this reduced fee:

- (i) The application must be for diversion of water only between December 1 and March 31;
 - (ii) The application must be primarily for diversion to underground storage in a groundwater basin identified in Bulletin 118;
 - (iii) The applicant must be a Groundwater Sustainability Agency or local agency as defined in Water Code section 10721;
 - (iv) The applicant has completed all environmental documents required under the California Environmental Quality Act (CEQA); and
 - (v) The application proposes diversions only when either the streamflow at the point(s) of diversion is above the 90th percentile calculated from gage data during the period-of-record and the diversion rate is limited to 20 percent of the total streamflow, or when flows in the source waterbody at or near the point of diversion exceed thresholds that trigger flood control actions necessary to mitigate threats to human health and safety according to established written flood management protocols adopted by a flood control agency.
- (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.~~ equal to \$500 plus 10 percent of the applicable application fee. No portion of the application fee shall be refundable once the application is either 1) accepted for filing or 2) the board communicates to the applicant that the applicant made a bona fide attempt to conform to the rules and regulations, but that the application is defective in some manner.

Note: Authority cited: Sections 1058 and 1530, Water Code. Reference: Sections 1425, 1426, 1525 and 1535, 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 of \$750 plus ~~\$0.0730.085~~ 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 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 ~~\$0.3040~~ for each acre-foot in excess of 10 acre-feet. The total fee shall not exceed ~~\$6,740~~\$20,000.

(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 ~~\$0.3050~~ 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 ~~\$534,155~~\$53,919.

(iii) The fee for a petition for extension of time shall be \$1,000 plus \$0.40 per acre-foot authorized for diversions in excess of 10 acre feet, or \$20,000, whichever is less; provided that the fee for a petition for extension of time filed in conjunction with a petition for another type of change for the same right shall be 50 percent of the fee otherwise applicable pursuant to this subparagraph.

(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 \$1,0005,000 plus \$3.00 per acre-foot of reduced flow, or \$75,000, whichever is less.

(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 § 1065

§ 1065. Annual Fees for Petitions or Requests.

(a) If any of the following circumstances occurs, a person filing a petition or request for release from priority shall pay an annual fee of \$1,000 plus \$0.40 per acre-foot as calculated pursuant to section 1066, subdivision (b), up to a maximum of \$10,000, for each water right application, permit or license covered by the petition or request. This annual fee is in addition to any annual fee required under section 1066.

(a1) The person requests the board to delay processing the petition or request.

(b2) The person diverts or uses water, before the board approves the requested change, in a manner that is not authorized without approval of the requested change.

(c3) The person 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 petition or request is filed, as may be required under CEQA, within two years after the board first provides notice of the petition or request.

(d4) The person fails to provide supplemental information requested pursuant to Water Code section 1701.3 within the time period provided.

(b) The fee due pursuant to subdivision (a) may be reduced to \$500 for any given year where the Division finds both of the following:

(1) The petitioner has timely provided all information required to continue processing the petition; and

(2) The Division has been unable to expend significant resources towards completion of processing the petition.

Note: Authority cited: Sections 1058 and 1530, Water Code. Reference: Sections 1525, 1536 and 1537, 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 ~~\$225~~\$300. 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 ~~\$0.073~~\$0.085 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.

(3) The annual fee shall be 75 percent of the fee calculated pursuant to subdivision (a) based on the face value of the permit or license, or a minimum fee of \$300 plus \$0.085 for every acre-foot in excess of 10 acre-feet actually diverted, whichever is greater, for permits or licenses issued on or after January 1, 2020 that meet the following criteria:

(A) The permit or license meets the criteria for the reduced application fee under section 1062, subdivision (a)(1)(F); and

(B) The right holder has installed and is maintaining a stream gage with telemetry capabilities to provide publicly available real-time streamflow conditions via the California Data Exchange Center website.

(4) The reduced annual fee available pursuant to subdivision (a)(3) of this section shall not apply if the right holder does not timely submit the progress report by the permittee required by section 925 or the report of licensee required by section 929.

(5) The reduced annual fee available pursuant to subdivision (a)(3) of this section shall be calculated based on timely reported diversions for the preceding reporting year, provided that the annual fee for the year in which a permit is issued shall be 75 percent of the fee calculated pursuant to subdivision (a) based on the face value of the permit or license.

(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. 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 use pursuant to Water Code section 1228.3 shall pay to the board a non-refundable registration fee of \$250.
- (b) Each holder of a registration for small domestic or livestock stockpond use issued pursuant to Water Code section 1228.5 shall pay to the board an annual fee in each year after the registration was first registered 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 and for

which no onstream reservoir will be constructed or used, shall pay to the board a non-refundable annual fee of \$750.

(f) A person who registers an appropriation of water for small irrigation use for cannabis that involves construction or use of an onstream reservoir shall pay a non-refundable filing fee of \$4,750.

(g) A person who registers an appropriation of water for small irrigation use for cannabis that involves construction or use of an onstream reservoir shall pay an annual fee of \$1,000 in each year after the year in which they pay the filing fee identified in subdivision (f).

(h) A person who registers both an appropriation of water for small irrigation use other than for cannabis use and an appropriation of water for small irrigation use for cannabis that use the same diversion shall receive a 50 percent discount on the fees required pursuant to subdivisions (c) and (d).

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

23 CCR § 3833.1

§ 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 \$ 0.43050 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 \$0.42525 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.

Note: Authority cited: Section 13160.1, Water Code. Reference: Section 13160.1, Water Code.