CALIFORNIA

Water Boards

STATE WATER RESOURCES CONTROL BOARD

REGIONAL WATER QUALITY CONTROL BOARDS

California Code of Regulations, Title 23

(http://ccr.oal.ca.gov)

Excerpts of Divisions 3-5 Applicable to the Administration of Water Rights

(Current as of April 1, 2016)

APRIL 2016

CALIFORNIA STATE WATER RESOURCES CONTROL

STATE OF CALIFORNIA
Jerry Brown, Governor

STATE WATER RESOURCES CONTROL BOARD
Felicia Marcus, Chair
Frances Spivy-Weber, Vice Chair
Tam Doduc, Member
Dorene D'Adamo, Member
Stephen Moore, Member

•

Thomas Howard, Executive Director
Jonathan Bishop, Chief Deputy Director
Eric Oppenheimer, Chief Deputy Director

Compiled by the Office of Chief Counsel

For additional copies or further information, contact the
State Water Resources Control Board, Office of Public Affairs
(916) 341-5254

STATE WATER RESOURCES CONTROL BOARD AND CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARDS

The State Water Resources Control Board was established in 1967 by the Legislature. The Board succeeded to the functions of the former State Water Rights Board and the State Water Quality Control Board. The nine California Regional Water Quality Control Boards were originally established in the Dickey Water Pollution Control Act of 1949. Together the ten water boards have primarily responsibility for implementing and enforcing the Porter-Cologne Water Quality Control Act.

This pamphlet contains portions of the California Code of Regulations applicable to the State Water Resources Control Board's administration of water rights. The State Water Resources Control Board publishes this collection as part of its public information program. This booklet is provided as a public service. While every effort is made to assure accuracy, persons should consult the official version of the California Code of Regulations when making legal decisions. The Office of Administrative Law maintains the official code of regulations, which is accessible on the Internet at:

http://ccr.oal.ca.gov/.

TABLE OF CONTENTS

Table of Contents _____ *iii*

Title 23. Waters _____ *1*

Division 3. State Water Resources Control Board and Regional Water Quality Control Boards _____ 1

Chapter 1. General Provisions _____ 1
Article 1. Definitions _____ 1
§ 640. Definitions. _____ 1
Article 2. Purpose, Use and Effect of Regulations _____ 1
§ 641. Purpose. _____ 1
§ 641.1. Use and Effect. _____ 2
Article 3. Official Records _____ 2
Article 4. Meeting Notice and Agenda Requirements _____ 2
Article 5. Conflict of Interest _____ 2
§ 644. State Board Membership. _____ 2
§ 644.1. Regional Water Quality Control Board Membership. _____ 2
§ 644.2. Significant Portion of Income. _____ 3
§ 644.3. Persons Subject to Requirements and Applicant. _____ 3
§ 644.4. Income. _____ 3
§ 644.5. Direct or Indirect Income. _____ 4
§ 644.6. Board Member's Statement of Employment. _____ 4
Article 6. State Water Resources Control Board - Conflict of Interest Code _____ 4
Chapter 1.5. Rules of Practice and Procedure _____ 6
Article 1. Meetings _____ 6
§ 647. Purpose. _____ 6
§ 647.1. Scheduling. _____ 6
§ 647.2. Notice and Agenda Requirements. _____ 6
§ 647.3. Public Comments. _____ 8
§ 647.4. Recording of Meetings. _____ 8
§ 647.5. Minutes of Meetings. _____ 8
Article 2. Adjudicative Proceedings _____ 9
§ 648. Laws Governing Adjudicative Proceedings. _____ 9
§ 648.1. Parties and Other Interested Persons. _____ 10
§ 648.2. Official Notice. _____ 11
§ 648.3. Evidence by Reference. _____ 11
§ 648.4. Identification of Witnesses; Presubmission and Presentation of Testimony and Exhibits. _____ 12

§ 648.5. Order of Proceedings. 13
§ 648.5.1. Rules of Evidence. 14
§ 648.6. Alternative Dispute Resolution. 14
§ 648.7. Informal Hearings. 15
§ 648.8. Enforcement Orders and Sanctions. 15
Article 3. Rulemaking and Informational Proceedings 16
§ 649. Scope. 16
§ 649.1. Rulemaking Proceedings. 17
§ 649.2. Notice of Informational Proceedings. 17
§ 649.3. Order of Procedure. 17
§ 649.4. Prepared Written Evidence. 18
§ 649.5. Questioning. 18
Article 4. Subpoenas 18
§ 649.6. Subpoenas. 18
Chapter 2. Appropriation of Water 19
Article 1. General Provisions 19
§ 650. Application for Water. 19
§ 651. Policy. 19
§ 652. Application Must Be Accompanied by Minimum Filing Fee. 20
§ 652.5. Application Fees for Small Hydroelectric Projects. 20
§ 653. Applications for Water Where an Existing Right Is Claimed. 20
§ 654. Documents That Must Be Sworn To. 20
§ 654.4. Policy. 20
Article 2. Definitions 21
Subarticle 1. General 21
§ 655. Application. 21
§ 656. Complete and Incomplete Applications. 21
§ 657. Regulation of Water. 22
§ 657.1. Recreational Reservoirs for Subdivisions. 22
§ 657.2. Stockwatering Reservoirs. 22
§ 658. Storage of Water. 22
Subarticle 2. Beneficial Uses 23
§ 659. Beneficial Use of Water. 23
§ 660. Domestic Uses. 23
§ 661. Irrigation Use. 23
§ 662. Power Use. 24
§ 662.5. Frost Protection Use. 24
§ 663. Municipal Use. 24
§ 664. Mining Use. 24
§ 665. Industrial Use. 24
§ 666. Fish and Wildlife Preservation and Enhancement Use. 25

§ 667. Aquaculture Use. 25
§ 667.5. Fish and Wildlife Protection and Enhancement. 25
§ 668. Recreational Use. 26
§ 668.5. Water Quality Use. 26
§ 669. Stockwatering Use. 26
§ 669.5. Name and Address of Applicant. 26
§ 670. Water Quality Use. 27
§ 670.5. Supplement to Application May Be Required. 27
§ 670.6. Instream Beneficial Use Assessment. 27
§ 671. Frost Protection Use. 27
§ 672. Heat Control Use. 28
§ 673. General Requirements. 28
§ 674. Requirements for Irrigation Purposes. 28
Article 3. How Applications Are Processed 28
§ 675. Substantial Compliance. 28
§ 676. Filing Fees. 29
§ 677. Application Fees for Small Hydroelectric Projects. 29
§ 678. Determination of Completeness. 29
§ 679. Cancellation of Application. 30
§ 680. Applications Not Made in a Bona Fide Attempt to Conform to Rules and Law. 30
§ 681. Time to Complete and Extensions Thereof. 31
§ 682. Additional Information. 31
§ 683. Supplemental Information. 32
§ 684. Issuance of Notice. 32
§ 685. Effect of Issuance of Notice. 33
Article 4. Requirements for Separate Applications and Joint Applications 33
§ 686. Separate Applications for Consumptive and Nonconsumptive Uses. 33
§ 687. Separate Application for Each Diversion. 34
§ 688. Separate Applications for Separately Owned Places of Use. 34
§ 689. Separate Application for Frost Protection. 34
§ 690. Application by an Agency Representing Users Within a Combined Place of Use. 35
§ 691. Joint Applications. 35
§ 692. Definitions. 36
§ 692.3. Determination of Completeness. 36
§ 692.5. Additional Information. 36
§ 692.7. Supplemental Information. 36
§ 693. Statement of Reasons and Request for Time to Complete. 37

§ 694. Time to Complete and Extensions Thereof. 37
Article 5. Amounts for Which to Apply 37
§ 695. Unappropriated Water. 37
§ 696. Applications Reasonably Necessary for Beneficial Use -How Stated. 37
§ 697. Examples of Amounts Considered Reasonably Necessary. 38
§ 698. Action upon an Application for an Excessive Amount. 39
§ 698.5. Separate Application for Frost Protection. 39
§ 699. Limitation upon Application and Right Obtained. 40
§ 700. Approval of Applications for Partial Season of Use. 40
§ 701. Application by an Agency Representing a Combined Use. 40
§ 702. Joint Applications. 40
§ 703. Joint Ownership of Places of Use. 41
Article 6. Contents of Application and Instream Beneficial Use Assessment 41
§ 705. Form of Application. 41
§ 706. General Requirements. 41
§ 707. Legal Nature, Name and Address of Applicant. 41
§ 708. Supplement to Application May Be Required. 42
§ 709. Instream Beneficial Use Assessment. 42
§ 710. Signature of Applicant. 48
§ 711. Documents That Must Be Sworn To. 48
§ 712. Issuance of Notice by Board. 48
§ 713. Effect of Issuance of Notice. 48
§ 714. Application for Permit to Appropriate Water from Wild and Scenic Rivers. 48
Article 7. Map Requirements 49
§ 715. General Requirements. 49
§ 716. Maps for Minor Projects. 50
§ 717. Maps for Larger Projects. 50
§ 718. Requirements for Municipal Purposes. 51
§ 719. Requirements for Irrigation Purposes. 51
§ 719.5. Claim of Right Without Compliance with Statutory Procedure. 52
§ 720. Requirements for Power Purposes. 52
§ 721. Requirements for Mining Purposes. 52
§ 722. Maps for Underground Storage. 53
§ 722.5. Abandonment of Protest. 53
§ 723. Requirements for Other Purposes. 53
§ 724. Filing and Application Without Maps -When Allowed. 54
§ 725. Deferral of CEQA Documents. 54
§ 728. Board May Conduct -Co-Operation by Parties. 54

§ 729. Benefits and Detriments; Alternative Projects. 54
Article 8. Special Situation Applications 54
§ 730. Adding Power Plants to Existing Works. 54
§ 731. Applications for Water Where an Existing Right Is Claimed. 55
§ 732. Relationship of Applicant and User. 56
§ 733. Underground Storage. 57
§ 733.5. Witnesses and Exhibits. 57
§ 734. Applications Within the California Wild and Scenic Rivers System. 58
§ 735. Napa River, Special. 58
§ 736. Petitions for Assignment or Release from Priority of Applications Filed Pursuant to Part 2, of Division 6, Sections 10500 et seq. of the Water Code. 59
§ 736.1. Hearings in Response to Drought Emergency Conditions. 60
§ 737. Time of Filing Petitions. 60
§ 737.1. Reconsideration of Board Decisions and Orders. 60
§ 737.2. Petition for Reconsideration. 60
§ 737.4. Board Action. 61
§ 737.5. Procedure Relating to Hearings. 61
§ 738. Protests to Petitions. 61
§ 738.5. Nature of Action. 61
§ 739. Hearings of Petitions for Release from Priority. 61
§ 740. Maps and Data Required. 62
§ 741. Notice of Petition. 62
§ 742. Procedure on Petitions. 62
§ 743. Changes Prior to Notice of an Application. 62
§ 744. Changes to Cover Incidental Uses of a Reservoir. 62
Article 9. Protests and Answers 62
§ 745. Protest Requirements. 62
§ 746. Claim of Right Without Compliance with Statutory Procedure. 63
§ 747. Time for Filing. 63
§ 748. Service of Supplements and Correspondence. 64
§ 749. Rejection of Protest. 64
§ 750. Abandonment of Protest. 64
§ 751. Answers to Protests. 65
§ 752. Content of Answers. 65
§ 753. Extension of Time for Negotiation. 65
§ 754. Establishment of Relationship. 66
Article 10. Investigations 66
§ 755. Board May Conduct - Cooperation by Parties. 66

§ 756. Benefits and Detriments; Alternative Projects. 66
§ 757. Filing for Service of a Subdivision (Leasing). 67
Article 11. Hearings and Proceedings in Lieu of Hearing 67
§ 760. Hearings on Water Right Applications and Other Water Right Matters. 67
§ 761. Procedure at Hearings. 68
§ 762. Witnesses and Exhibits. 68
§ 762.5. Passage of Water for Fish. 68
§ 763. Subpoenas. 68
§ 763.5. Release of Stored Water. 69
§ 764. Combined Hearings. 69
§ 764.5. Investigation of Complaints. 69
§ 764.6. Action by the Board. 70
§ 764.7. Action on the Board's Own Motion. 70
§ 764.8. Licenses. 70
§ 764.9. Policy. 70
§ 764.10. Investigations. 70
§ 764.11. Notifications and Orders. 70
§ 764.12. Noncompliance with Order: Revocation of Entitlement. 70
§ 764.13. Noncompliance with Order: Enforcement by Attorney General. 71
§ 764.14. Alternative Procedure. 71
§ 764.20. Conservation and Protection of Water Within the Sacramento-San Joaquin Delta and Its Tributary Streams. 71
§ 765. Hearings to Be Held Promptly. 71
§ 766. Failure to Appear -Effect. 71
§ 767. Hearings in Response to Drought Emergency Conditions. 72
Article 12. Reconsideration and Amendments of Board Water Right Decision and Orders 72
§ 768. Reconsideration of Board Decisions and Orders. 72
§ 769. Petition for Reconsideration. 73
§ 770. Board Action. 74
§ 771. Procedure Relating to Hearings. 74
§ 772. Issuance of Separate Permits and Licenses. 74
Article 13. Right of Access 75
§ 775. Right of Access Over Lands Not Owned by Applicant. 75
§ 776. Where Public Agency Permission or Approval Is Required. 75
§ 776.5. Requests for Extension of Time Under Permit. 75
§ 777. Right of Access over Lands Where Title Is Disputed. 75
§ 778. Request for Extension of Time Under Permits. 76
§ 778.5. Notice of Petitions and Protests. 76
§ 779. Cause for Extension of Time. 76

Article 14. Standard Permit Terms and Conditions _____76
§ 780. Standard Permit Terms. _____76
§ 781. Public Access for Fishing. _____78
§ 782. Passage of Water for Fish. _____78
§ 783. Waste Discharge Requirements. _____79
§ 784. Release of Stored Water. _____80
§ 785. Surface Diversion or Storage._____81
§ 786. Underground Storage. _____81
§ 790. Revocation Hearings. _____81
Article 15. Changes in Point of Diversion, Place of Use, or Purpose of Use _____81
§ 791. Change Petitions. _____81
§ 792. Nature of Approval Action. _____82
§ 793. Filing Fee When Multiple Changes or Rights Involved. [Repealed] _____83
§ 794. Petition Information and Map Requirements. _____84
§ 795. Notice of Change Petitions. _____85
§ 796. Protest Procedure on Change Petitions. _____86
§ 797. Changes Prior to Notice of an Application. _____86
§ 798. Changes to Cover Incidental Uses of a Reservoir._____87
§ 799. Petition for Change to Add a Power Plant to Existing Works. _____87
Article 16. Temporary Changes Due to Transfer or Exchange of Water or Water Rights_____87
§ 800. Temporary Changes. _____87
§ 801. Notice of Temporary Change. _____88
§ 802. Map Requirements. _____88
§ 803. Action by the Board Regarding Temporary Changes. _____88
§ 804. Public Notice and Objections to Proposed Temporary Changes. _____88
Article 16.5. Temporary Urgency Changes _____89
§ 805. Petition for Temporary Urgency Change. _____89
§ 806. Notification of and Objections to Temporary Urgency Changes. _____89
Article 17. Changes Involving a Long-Term Transfer of Water or Water Right _____90
§ 811. Long Term Transfer. _____90
§ 812. Petition for Long-term Transfer. _____90
§ 813. Map Requirements. _____91
§ 814. Notice of Long-term Petitions._____91
§ 815. Protest Procedure on Long-term Transfer Petitions. _____91
§ 816. Action of the Board Regarding Long-term Transfers. _____91

Article 18. Enforcement of Terms and Conditions _____92
§ 820. Complaints of Violations. _____92
§ 821. Investigation of Complaints. _____92
§ 822. Action by the Board._____93
§ 823. Action on the Board's Own Motion. _____93
Article 19. Changes of Ownership and of Address-Notices _____93
§ 830. Procedure on Change of Address. _____93
§ 831. Notice to Board of Changes in Ownership. _____94
§ 832. Contests As to Ownership._____94
§ 833. Presumption Based on Ownership of Place of Use. _____94
§ 834. Presumption That Water Right Passes upon Foreclosure Sale. _____94
§ 835. Presumption upon Termination of an Option or Lease Relative to Real Property. _____95
§ 836. Issuance of Separate Permits and Licenses. _____95
Article 20. Diligence Required -Extensions of Time _____96
§ 840. Reasonable Promptness Required. _____96
§ 841. Time for Completion. _____96
§ 842. Requests for Extension of Time Under Permits. _____96
§ 843. Notice of Petitions and Protests. _____97
§ 844. Cause for Extension of Time. _____97
§ 845. Withholding Issuance of Permit. _____98
§ 846. Measuring Devices and Statements. _____99
§ 847. Progress Report._____99
§ 848. Contents._____99
Article 21. Revocation of Permits and Licenses _____ 100
§ 850. Revocation Hearings. _____ 100
§ 851. Notice of Hearing._____ 100
§ 852. Procedure Relating to Hearings. _____ 100
Article 22. Prevention of Waste and Unreasonable Use _____ 101
§ 855. Policy and Definition. _____ 101
§ 856. Investigations._____ 101
§ 857. Notifications, Hearings and Orders._____ 101
§ 858. Noncompliance with Order Regarding Misuse Under Water Right Entitlement. _____ 102
§ 859. Noncompliance with Other Order. _____ 102
§ 860. Alternative Procedure. _____ 103
§ 862. Russian River, Special. _____ 103
Article 22.5. Drought Emergency Water Conservation _____ 107
§ 863. Findings of Drought Emergency. _____ 107
§ 864. End-User Requirements in Promotion of Water Conservation. _____ 108

§ 865. Mandatory Actions by Water Suppliers. 110
§ 866. Additional Conservation Tools. 116
Article 23. Stream Systems Declared to be Fully Appropriated 117
§ 870. Purpose of this Article. 117
§ 871. Revocation or Revision of a Declaration. 118
§ 872. Addition of Stream Systems to the Declaration. 119
§ 873. Applications Pending at Time of Revision or Addition. 120
§ 874. Notice of Hearings and Hearing Rules of Procedure. 122
Article 24. Curtailment of Diversions and Other Actions Based on Insufficient Flow to Meet All Needs 122
§ 875. Curtailments Due to Lack of Water Availability. [Repealed] 122
§ 876. Additional Water User Information for the Protection of Specific Fisheries in Tributaries to the Russian River. 123
§ 877. Emergency Curtailment Where Insufficient Flows Are Available to Protect Fish in Certain Watersheds. [Repealed] 125
§ 878. Non-Consumptive Uses. [Repealed] 125
§ 878.1. Minimum Health and Safety Needs. [Repealed] 126
§ 878.2. Local Cooperative Solutions. [Repealed] 126
§ 878.3. Alternative Water Sharing Agreements. [Repealed] 127
§ 879. Reporting. 127
§ 879.1. Conditions of Permits, Licenses and Registrations. [Repealed] 129
§ 879.2. Compliance and Enforcement. [Repealed] 129
Chapter 2.5. Water Rights for Stockponds 130
Article 1. Definitions 130
§ 880. Board. 130
§ 881. Stockpond. 130
Article 2. Claims of Water Rights and Applications for Certification 130
§ 885. Forms. 130
§ 886. Refusal to Accept Claims. 130
§ 887. Number of Claims Required. 131
§ 888. Penalty for Perjury. 131
Article 3. Fees 131
§ 890. Fees. 131
Article 4. Notice of Claims and Protests 131
§ 895. Notices. 131
§ 896. Protests. 132
§ 897. Content of Protests. 132
§ 898. Ground for Protest. 132
Article 5. Investigation, Hearing, and Certification of Claims 133
§ 900. Investigation. 133

§ 901. Hearing. 133
§ 902. Certification. 133
Article 6. Continued Use of the Stockpond and Revocation of the Certification 134
§ 905. Continued Use of the Stockpond. 134
§ 906. Revocation of the Certification. 134
Chapter 2.7. Water Diversion and Use Reports 134
Article 1. Definitions 134
§ 907. Definitions. 134
§ 908. Compliance. 135
Article 2. Declaration of Policy 135
§ 910. Purpose. 135
§ 911. Construction. 136
§ 912. No Conflicts with Other Reporting Requirements. 136
§ 915. Changes in Name, Address or Ownership. 137
§ 916. Request for Additional Time. 137
§ 917. Reporting - Insufficient Flows to Support All Diversions. 138
§ 918. Ground for Protest. [Renumbered] 139
§ 920. Supplemental Statements of Water Diversion and Use. 139
§ 921. Watermaster Reports Filed with the Board. 141
§ 922. Diverters in a Watermaster Service Area. 142
§ 924. Water Use Reports of Registration and Certificate Holders. 142
§ 925. Progress Reports by Permittee. 143
§ 926. Revocation of the Certification. [Renumbered] 144
§ 929. Reports of Licensee. 145
§ 930. Notices of Extraction and Diversion. 146
Chapter 2.8. Measuring and Monitoring 147
§ 931. Definitions. 147
§ 931.5. Authority of the Delta Watermaster. 149
§ 932. Applicability. 149
§ 933. Measuring Device Requirements. 152
§ 934. Measurement Method. 157
§ 935. Alternative Compliance for a Measuring Device or Measurement Method Requirement. 161
§ 936. Request for Additional Time. 163
§ 937. Report of Water Measuring Device. 164
§ 938. Compliance. 165
Chapter 3. Determination of Right to the Use of Water 165
Article 1. Definitions 165
§ 940. Board. 165

Article 2. Adjudications Under Water Code Sections 2500 Through 2900 _____ 165
§ 945. Petition. _____ 165
§ 946. Public Interest and Necessity. _____ 166
§ 947. Proof of Claim of Water Right. _____ 166
§ 948. Signature of Deponent Claimant. _____ 167
§ 949. Objections. _____ 168
§ 950. Other Applicable Regulations. _____ 168
§ 951. Inspection of Records. _____ 168
§ 952. Separate Proof for Each Purpose of Use. [Renumbered] 169
§ 953. Separate Proof for Each Diversion. [Renumbered] _____ 169
§ 954. Single Proof for Claim Initiated Under the Water Commission Act or Water Code. [Renumbered] _____ 169
§ 955. Claims to Water Supplied by District or Water Company. [Renumbered] _____ 169
§ 956. Divided Interests. [Renumbered] _____ 169
§ 957. Undivided Interests. [Renumbered] _____ 169
§ 958. General Requirements for Proofs of Claims. [Repealed] 169
§ 959. Specific Requirements for Irrigation Proofs. [Repealed] 170
§ 960. Uses Other Than Irrigation. [Repealed] _____ 170
§ 961. Signature of Deponent. [Renumbered] _____ 170
§ 962. Objections. [Renumbered] _____ 170
§ 963. Subpoenas. [Repealed] _____ 170
§ 964. Procedure at Hearings. [Repealed] _____ 171
§ 965. Official Notice. [Repealed] _____ 171
§ 966. Evidence by Reference. [Repealed] _____ 171
§ 967. Oral Arguments and Briefs. [Repealed] _____ 171
§ 968. Attorneys or Agents. [Repealed] _____ 171
§ 969. Inspection of Records. [Renumbered] _____ 171
Chapter 4. Recordation of Water Extractions and Diversions _____ 172
Article 1. Notices of Water Extractions and Diversions _____ 172
§ 1000. Use of Forms. _____ 172
§ 1001. Separate Notices. _____ 172
§ 1002. Contents of Notices. _____ 172
Article 2. Fees _____ 172
§ 1010. Filing Fees. _____ 172
§ 1011. Effect of Failure to Pay Filing Fees. _____ 173
§ 1012. Investigation Charges. _____ 173
Article 3. Investigation and Determination of Facts _____ 173
§ 1020. Notice of Investigation. _____ 173
§ 1021. Service of Proposed Findings. _____ 174
§ 1022. Hearing. _____ 174

§ 1023. Further Procedure. 174
§ 1024. Shortening of Time. 175
Chapter 4.5. Procedures for Protecting Instream Beneficial Uses [Repealed] 175
Chapter 5. Fees 175
§ 1061. Definitions. 175
§ 1062. Filing Fees for Water Right Applications. 176
§ 1063. Annual Fees for Water Right Applications. 178
§ 1064. Filing Fees for Petitions or Requests. 179
§ 1065. Annual Fees for Petitions or Requests. 181
§ 1066. Annual Fees for Permits or Licenses. 182
§ 1067. Water Leases. 183
§ 1068. Registration Fees for Small Domestic, Livestock Stockpond and Small Irrigation Uses. 184
§ 1069. Proof of Claim. 185
§ 1070. Notice of Extraction and Diversion of Water. 185
§ 1071. Hydroelectric Projects. 186
§ 1072. Joint and Several Liability. 186
§ 1073. Allocation of Fees and Expenses. 187
§ 1074. Administration of Fees and Expenses. 188
§ 1075. Collection of Fees and Expenses. 190
§ 1076. Cancellation for Nonpayment of Fees. 191
§ 1077. Petition for Reconsideration. 191
§ 1078. Objection to Determination of Expenses. 192
Chapter 22. State Policy for Water Quality Control 193
§ 2900. Nondegradation: Statement of Policy with Respect to Maintaining High Quality of Waters in California 193
§ 2921. Water Quality Control Policy for Maintaining Instream Flows in Northern California Coastal Streams. 193
Chapter 23. Water Quality Control Plans 195
§ 3002. Clear and Concise Summary of Revised Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary. 195
Chapter 27. Regulations for Implementation of the Environmental Quality Act of 1970 196
Article 1. General 196
§ 3720. Purpose. 196
§ 3721. Definitions. 197
§ 3722. Compliance with Permit Streamlining Act. 197
§ 3723. Master Environmental Assessment. 198
Article 2. Exemptions 198
§ 3730. Ministerial Project Exemption. 198

§ 3733. Waste Discharge Requirements Adopted Pursuant to Water Code Division 7, Chapter 5.5. 199
Article 3. Applications for Waste Discharge, Water Recycling Requirements, or Other Entitlements for Use 199
§ 3740. Submission of Information. 199
§ 3741. Additional Information Requirements. 199
§ 3742. Denial or Limitation of Waste Discharge Requirements, Water Recycling Requirements, or Other Entitlement for Use. 200
Article 4. Applications for Funding 201
§ 3750. Submission of Information. 201
§ 3751. Limitation of Funding. 201
Article 5. Processing of Environmental Documents 202
§ 3760. Time Limits in Action by Responsible Agency. [Repealed] 202
§ 3761. Determination As to Completeness of Application. [Repealed] 202
§ 3762. Availability of Environmental Documents. 202
§ 3763. Public Participation and Hearings. 202
§ 3764. Charges for Preparation of Environmental Documents. [Repealed] 203
Article 6. Exempt Regulatory Programs 203
§ 3775. Applicability. 203
§ 3775.5. Early Public Consultation. 203
§ 3776. Roles of State Board and Regional Boards. 204
§ 3777. Substitute Environmental Documentation: Requirements for Adoption or Approval of Plans or Policies. 205
§ 3778. Consultation. 206
§ 3779. Notice of Filing of Draft SED; Public Comments. 207
§ 3779.5. Final Substitute Environmental Documentation (SED). 208
§ 3780. Approval. 209
§ 3781. Notice of Decision. 209
§ 3782. Exempt Regulatory Programs. [Repealed] 209
Appendix A 209
Appendix B 222
Appendix C 223
Chapter 28. Certifications 223
Article 1. General Provisions 223
§ 3830. Purpose and Review of Regulations. 223
§ 3831. Definitions. 224
§ 3832. Number of Copies. 226
§ 3833. Application Fees and Refunds. 227

§ 3833.1. Annual Fees for FERC Licensed Hydroelectric Projects. 229
§ 3834. Amendments to Applications. 232
§ 3835. Complete, Incomplete, and Valid Applications. 232
§ 3836. Additional Information. 233
§ 3837. Denial of Certification. 233
§ 3838. Authority of Executive Director, Executive Officers, and Regional Boards. 234
Article 2. Tax Certifications 235
§ 3841. Application Forms; Compliance with Federal Regulations. 235
§ 3842. Filing of Application. 235
§ 3843. Reports of Waste Discharge. 235
§ 3844. Regional Board Action. 235
§ 3845. Issuance of Certification. 236
Article 3. Small Business Certifications 236
§ 3848. Federal Regulations; Delegation. 236
§ 3849. Filing of Applications. 236
§ 3850. Content of Applications. 236
§ 3851. Review and Issuance of Certifications. 236
§ 3852. Utilization of Certification. 236
Article 4. Water Quality Certification 237
§ 3855. Filing of Application. 237
§ 3856. Contents of a Complete Application. 238
§ 3857. Waste Discharge Requirements. 240
§ 3858. Public Notice and Hearings. 240
§ 3859. Action on an Application. 240
§ 3860. Standard Conditions. 241
§ 3861. Water Quality Certification for Classes of Activities. 242
Article 5. Pollution Control Certifications 243
§ 3862. Filing of Applications. 243
§ 3863. Contents of Application. 243
§ 3864. Review of Applications, Issuance of Certifications. 244
Article 6. Petitions to State Board 244
§ 3867. Petitions for State Board Reconsideration. 244
§ 3867.1. Response to Complete Petitions. 246
§ 3868. Defective Petitions. 246
§ 3869. Action on a Petition. 246

Division 5. Prevention of Waste, Unreasonable Use or Diversion of Water (State Water Resources Control Board and Department of Water Resources) 248

Chapter 1. Procedures 248

§ 4000. Definitions. 248
§ 4001. Investigations. 249
§ 4002. Notifications and Responses. 249
§ 4003. Further Investigations. 250
§ 4004. Hearing Before the Board. 250
§ 4005. Noncompliance with Order: Revocation of Entitlement. 250
§ 4006. Noncompliance with Order: Enforcement by Attorney General. 250
§ 4007. Independent Authority. 251

TITLE 23. WATERS
DIVISION 3. STATE WATER RESOURCES CONTROL BOARD AND REGIONAL WATER QUALITY CONTROL BOARDS

CHAPTER 1. GENERAL PROVISIONS

Article 1. Definitions

§ 640. Definitions.

(a) "Board" when used in this chapter and chapter 1.5, unless otherwise designated, means either the State Water Resources Control Board or any California Regional Water Quality Control Board.

(b) "State Board" when used in this chapter and chapter 1.5 means the State Water Resources Control Board.

(c) "Regional Board" when used in this division means any California Regional Water Quality Control Board.

NOTE: AUTHORITY CITED: SECTIONS 185 AND 1058, WATER CODE.

REFERENCE: SECTION 13203, WATER CODE.

HISTORY

1. *Renumbering of Subchapter 1 (from Sections 600-649, not consecutive, to Subchapter 1, Sections 640-645.9, not consecutive -see Cross Referencing Table preceding Detailed Analysis filed 5-23-79 as procedural and organizational; effective upon filing (Register 79, No. 21).*
2. *Amendment filed 8-6-81; effective thirtieth day thereafter (Register 81, No. 32).*
3. *Amendment of division heading and repealer and new section filed 3-26-98 as an interim regulation pursuant to Government Code section 11400.20; operative 3-26-98 (Register 98, No. 13). Interim regulations expire 12-31-98 unless earlier amended or repealed.*
4. *Pursuant to Government Code section 11400.20(b)(2), interim regulations extended to 3-31-99 by filing of permanent regulations with OAL on 11-25-98. Adoption of permanent regulations disapproved by OAL 1-12-99; resubmitted by the State Water Resources Control Board on 3-10-99; and filed with the Secretary of State on 3-31-99, effective upon filing (Register 99, No. 14).*

Article 2. Purpose, Use and Effect of Regulations

§ 641. Purpose.

The regulations contained in this chapter are adopted for the purpose of implementing and carrying out provisions of Parts 1, 2, 3, 5 and 5.1 of Division 2, Part 2 of Division 6, Division 7 and Division 7.5 of the Water Code.

NOTE: AUTHORITY CITED: SECTIONS 185 AND 1058, WATER CODE.

REFERENCE: SECTIONS 185 AND 1058, WATER CODE.

HISTORY

1. *Amendment filed 3-10-60; effective thirtieth day thereafter (Register 60, No. 5).*

2. Amendment filed 12-7-67 as organizational and procedural; effective upon filing (Register 67, No. 49).
3. Amendment filed 8-6-81; effective thirtieth day thereafter (Register 81, No. 32).

§ 641.1. Use and Effect.

NOTE: AUTHORITY AND REFERENCE CITED: SECTION 1058, WATER CODE.

HISTORY

1. Amendment filed 3-10-60; effective thirtieth day thereafter (Register 60, No. 5).
2. Repealer filed 8-6-81; effective thirtieth day thereafter (Register 81, No. 32).

Article 3. Official Records

NOTE: AUTHORITY AND REFERENCE CITED: SECTION 1058, WATER CODE.

HISTORY

1. Repealer of Article 3 (Sections 642 and 642.1) filed 8-6-81; effective thirtieth day thereafter (Register 81, No. 32). For prior history, see Register 60, No. 5.

Article 4. Meeting Notice and Agenda Requirements

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: SECTION 11125, GOVERNMENT CODE.

HISTORY

1. New Article 4 (Sections 620-623) filed 3-8-74; effective thirtieth day thereafter (Register 74, No. 10).
2. Repealer of Article 4 (Sections 643-643.3) filed 12-1-80; effective thirtieth day thereafter (Register 80, No. 49).

Article 5. Conflict of Interest

§ 644. State Board Membership.

Pursuant to Water Code Section 13388, no person shall be a member of the State Board if he receives or has received during the previous two years a significant portion of his income directly or indirectly from any person subject to waste discharge requirements or an applicant for waste discharge requirements under the provisions of Chapter 5.5, Division 7, California Water Code (NPDES permits).

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: SECTION 11125, GOVERNMENT CODE.

HISTORY

1. New Article 5 (Sections 625-631) filed 5-22-75; effective thirtieth day thereafter (Register 75, No. 21).

§ 644.1. Regional Water Quality Control Board Membership.

Pursuant to Water Code Section 13388, no person shall be a member of a Regional Board if he receives or has received during the previous two years a significant portion of his income directly or indirectly from any person subject to waste discharge requirements or an applicant for waste discharge requirements

under the provisions of Chapter 5.5, Division 7, California Water Code (NPDES permits).

NOTE: AUTHORITY CITED: SECTIONS 1058, 13370 AND 13371, WATER CODE.

REFERENCE: SECTIONS 13388, WATER CODE; AND CLEAN WATER ACT SECTION 304(I)(2)(D), 33 USC SECTION 1314(I)(2)(D) AND 40 CFR SECTION 123.25(C)(1)(I), (II), (III), (IV) AND (C)(2).

HISTORY

1. New NOTE filed 10-1-85; effective thirtieth day thereafter (Register 85, No. 40).

§ 644.2. Significant Portion of Income.

The term "significant portion of his income" shall mean ten percent of gross personal income for a calendar year except that it shall mean 50 percent of gross personal income for a calendar year if the recipient is over 60 years of age and is receiving such portion pursuant to retirement, pension or similar arrangement.

NOTE: AUTHORITY CITED: SECTIONS 1058, 13370 AND 13371, WATER CODE.

REFERENCE: SECTIONS 13388, WATER CODE; AND CLEAN WATER ACT SECTION 304(I)(2)(D), 33 USC SECTION 1314(I)(2)(D) AND 40 CFR SECTION 123.25(C)(1)(II).

HISTORY

1. New NOTE filed 10-1-85; effective thirtieth day thereafter (Register 85, No. 40).

§ 644.3. Persons Subject to Requirements and Applicant.

The terms "persons subject to waste discharge requirements" and "applicant for waste discharge requirements" shall apply only to persons regulated under Chapter 5.5, Division 7, California Water Code (NPDES permits) but shall not include any department or agency of the state government including the University of California and the State University and Colleges.

NOTE: AUTHORITY CITED: SECTIONS 1058, 13370 AND 13371, WATER CODE.

REFERENCE: SECTIONS 13388, WATER CODE; AND CLEAN WATER ACT SECTION 304(I)(2)(D), 33 USC SECTION 1314(I)(2)(D) AND 40 CFR SECTION 123.25(C)(1)(III).

HISTORY

1. New NOTE filed 10-1-85; effective thirtieth day thereafter (Register 85, No. 40).

§ 644.4. Income.

The word "income" includes, but is not limited to, retirement benefits, consultant fees, and stock dividends.

NOTE: AUTHORITY CITED: SECTIONS 1058, 13370 AND 13371, WATER CODE.

REFERENCE: SECTIONS 13388, WATER CODE; AND CLEAN WATER ACT SECTION 304(I)(2)(D), 33 USC SECTION 1314(I)(2)(D) AND 40 CFR SECTION 123.25(C)(1)(IV).

HISTORY

1. New NOTE filed 10-1-85; effective thirtieth day thereafter (Register 85, No. 40).

§ 644.5. Direct or Indirect Income.

Income is not received "directly or indirectly" which is derived from mutual fund payments, or from other investments which are so diversi fied that the recipient does not know the identity of the primary sources of income.

NOTE: AUTHORITY CITED: SECTIONS 1058, 13370 AND 13371, WATER CODE.

REFERENCE: SECTIONS 13388, WATER CODE; AND CLEAN WATER ACT SECTION 304(I)(2)(D), 33 USC SECTION 1314(I)(2)(D) AND 40 CFR SECTION 123.25(C)(2).

HISTORY

1. New NOTE filed 10-1-85; effective thirtieth day thereafter (Register 85, No. 40).

§ 644.6. Board Member's Statement of Employment.

By July 15, 1975, and by April 30 of each year thereafter, each member of the State Board and each member of a Regional Water Quality Control Board shall file with the Executive Director of the State Board a statement under penalty of perjury containing the following information:

(a) The names of any persons who are applicants for waste discharge requirements, or who are subject to waste discharge requirements, from which the Board member has received any income.

(b) If the total of income from persons listed under (a) is in excess of ten percent of his gross personal income for the current year or for either of the two previous calendar years.

(c) If the Board member is over 60 years of age, whether the total of income from persons listed under (a) from retirement, pension or similar arrangement is in excess of 50 percent of his gross personal income for the current year or for either of the two previous calendar years.

NOTE: AUTHORITY CITED: SECTIONS 185 AND 1058, WATER CODE.

REFERENCE: SECTION 11125, GOVERNMENT CODE, SECTION 13388, WATER CODE.

HISTORY

1. Amendment filed 8-6-81; effective thirtieth day thereafter (Register 81, No. 32).

Article 6. State Water Resources Control Board - Conflict of Interest Code

NOTE: It having been found, pursuant to Government Code Section 11409(a), that the printing of the regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application, these regulations are not published in full in the California Code of Regulations. The regulations are available to the public for review or purchase at cost at the following locations:

The Conflict of Interest Code is designated as Article 6, Chapter 1, Division 3 of Title 23 of the California Code of Regulations and consists of sections numbered and titled as follows:

STATE WATER RESOURCES CONTROL BOARD

PERSONNEL OFFICER
1001 I Street, 18th Floor
P.O. Box 100 (95812-0100)
Sacramento, California 95814

FAIR POLITICAL PRACTICES COMMISSION
428 J Street, Suite 620
Sacramento, California 95814

ARCHIVES
SECRETARY OF STATE
1020 O Street
Sacramento, California 95814

The Conflict of Interest Code is designated as Article 6, Chapter 1, Division 3 of Title 23 of the California Code of Regulations and consists of sections numbered and titled as follows:

Article 6. State Water Resources Control Board - Conflict of Interest Code
Section 645.
General Provisions
Appendix

NOTE: AUTHORITY CITED: SECTIONS 87300 AND 87304, GOVERNMENT CODE.
REFERENCE: SECTION 87300 ET SEQ., GOVERNMENT CODE.

HISTORY

1. *New article 6 (sections 640-649) filed 2-14-78; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 6-8-77 (Register 78, No. 7).*
2. *Amendment filed 11-2-79; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 6-5-79 (Register 79, No. 44).*
3. *Repealer of article 6 (sections 645-645.9) and new article 6 (section 645 and Appendix) filed 2-26-81; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 1-12-81 (Register 81, No. 9).*
4. *Amendment of Appendix filed 2-24-93; operative 3-26-93. Approved by Fair Political Practices Commission 11-13-92 (Register 93, No. 9).*
5. *Editorial correction of printing errors updating addresses (Register 94, No. 3).*
6. *Amendment of addresses and Appendix filed 2-14-94; operative 3-16-94. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 12-28-93 (Register 94, No. 7).*
7. *Amendment of general provisions, addresses and Appendix filed 1-9-96; operative 2-8-96. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 10-31-95 (Register 96, No. 2).*

8. Amendment of Appendix filed 12-9-97; operative 1-8-98. Approved by Fair Political Practices Commission 10-31-97 (Register 97, No. 50).

9. Amendment of Appendix filed 12-31-99; operative 1-30-2000. Approved by Fair Political Practices Commission 11-5-99 (Register 99, No. 53).

10. Amendment of section and Appendix filed 4-17-2002; operative 5-17-2002. Approved by Fair Political Practices Commission 2-8-2002. For prior history of former article 7 (section 645), "Verification of Alien Eligibility," see Registers 2000, No. 5; 99, No. 2; 98, No. 37 and 98, No. 20 (Register 2002, No. 16).

11. Change without regulatory effect amending address filed 9-25-2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 39).

12. Amendment of Appendix filed 5-17-2005; operative 6-16-2005. Approved by Fair Political Practices Commission 3-8-2005 (Register 2005, No. 20).

13. Amendment of Appendix filed 5-1-2007; operative 5-31-2007. Approved by Fair Political Practices Commission 2-26-2007 (Register 2007, No. 18).

14. Amendment filed 4-5-2012; operative 5-5-2012. Approved by Fair Political Practices Commission 2-16-2012 (Register 2012, No. 14).

CHAPTER 1.5. RULES OF PRACTICE AND PROCEDURE

Article 1. Meetings

§ 647. Purpose.

Provisions of this article are intended to govern procedures of the State Water Resources Control Board (State Board) and the Regional Water Quality Control Board (Regional Boards) in public meetings of the State and Regional Boards. This subchapter is intended to establish minimum requirements of practice and procedure. It is a supplement to the requirements of Article 9 (commencing with Section 11120), Chapter 1, Part 1, Division 3 of the Government Code, also known as the Bagley Act. To the extent that other sections of this chapter establish more detailed and specific procedures, those sections shall apply. Unless otherwise specified, use of the word "Board" in this subchapter shall mean both the State Board and the Regional Boards.

NOTE: AUTHORITY CITED: SECTIONS 185 AND 1058, WATER CODE.

REFERENCE: SECTIONS 11120, ET SEQ., GOVERNMENT CODE.

HISTORY

1. New Subchapter 1.5 (Articles 1-4, Sections 647-649.6).

§ 647.1. Scheduling.

State and Regional Boards shall meet at least six times a year. Additional meetings may be held at any time.

NOTE: AUTHORITY CITED: SECTIONS 185 AND 1058, WATER CODE.

REFERENCE: SECTIONS 11120, ET SEQ., GOVERNMENT CODE.

§ 647.2. Notice and Agenda Requirements.

(a) Purpose. Government Code Section 11125 requires state agencies to provide notice at least one week in advance of any meeting to any person who

requests such notice in writing except that emergency meetings may be held with less than one week's notice when such meetings are necessary to discuss unforeseen emergency conditions as defined by published rule of the agency. The purpose of this section is to establish procedures for compliance with Government Code Section 11125 by the State Board and the Regional Boards.

(b) Contents of Meeting Notice. The notice for all meetings of the State Board and Regional Boards shall specify the date, time and location of the meeting and include an agenda listing all items to be considered. The agenda shall include a description of each item, including any proposed action to be taken.

(c) Time of Notice. Notice shall be given at least one week in advance of the meeting. When the notice is mailed, it shall be placed in the mail at least eight days in advance of the meeting.

(d) Emergency Conditions. The provisions of this section do not apply when an item must be considered or a meeting held because of unforeseen emergency conditions. Unforeseen emergency conditions exist when there have been unexpected circumstances requiring immediate action by the State Board or Regional Boards to regulate the water resources of the state so as to protect the public health, welfare, or safety. It is not necessary that the emergency conditions be such that they could not have been anticipated or prepared for but only that in the normal course of events they would seldom be expected. Notice of such consideration or meeting shall be given by mail, telephone, telegram, or other available means to persons known to be interested in the matter.

(e) Distribution. Notice shall be given to all persons directly affected by proceedings on the agenda and to all persons who request in writing such notice. Notice shall be given to any person known to be interested in proceedings on the agenda.

(f) Uncontested Items Calendar. The agenda may include an item designated "the uncontested items calendar."

(1) The uncontested items calendar shall include only those matters for which there appears to be no controversy.

(2) At the request of any Board member or other interested person, any matter shall be removed from the uncontested items calendar and may be considered at the same meeting as a separate item of business.

(3) Late revisions and/or corrections to items on the uncontested items calendar shall be specified for inclusion prior to considering a vote on the uncontested items calendar. If such revisions constitute a significant change in the proposed action on any item, action shall be deferred until a later meeting of the Board.

(4) After an opportunity for requests to remove any matters from the uncontested items calendar has been given, a vote shall be taken on the

uncontested items calendar. Upon a vote to approve the uncontested items calendar, each matter on the uncontested items calendar shall be approved and shall have the same force and effect as it would have if approved as a separate agenda item.

NOTE: AUTHORITY CITED: SECTIONS 185 AND 1058, WATER CODE.
REFERENCE: SECTION 11125, GOVERNMENT CODE.

§ 647.3. Public Comments.

(a) Any person may submit comments in writing on any agenda item. Any person submitting such comments shall provide the Board with a copy of the comments in advance of the meeting at which it is to be considered. Such comments may be inspected by any interested person.

(b) Persons present shall be given an opportunity to make relevant oral comments on any agenda item; provided, however, that the Chairperson or other presiding member may limit or preclude such comments as necessary for the orderly conduct of business. The provisions of this section are limited to meetings and shall not apply to adjudicatory hearings as defined and provided for in Article 2.

NOTE: AUTHORITY CITED: SECTIONS 185 AND 1058, WATER CODE.
REFERENCE: SECTIONS 11120, ET SEQ., GOVERNMENT CODE.

§ 647.4. Recording of Meetings.

(a) State and Regional Board public meetings shall be recorded by stenographic reporter or electronic recording or both. Such recordings shall be available for public review and copying at the appropriate State or Regional Board office.

(b) The cost of copying the record of any meeting shall be borne by the requester. Staffing needs may require that copying be performed at another location by persons other than the staff of the Board.

(c) The recordings shall be retained for the period of time required by applicable law governing the retention of records of state agency public proceedings, or until conclusion of administrative or judicial proceedings, whichever is later.

NOTE: AUTHORITY CITED: SECTIONS 185 AND 1058, WATER CODE.
REFERENCE: SECTIONS 11120, ET SEQ., GOVERNMENT CODE.

§ 647.5. Minutes of Meetings.

(a) The State and Regional Boards shall keep minutes of their meetings.

(b) Minutes shall be approved by each Board.

(c) Approved minutes shall be the official record of actions taken at any meeting.

NOTE: AUTHORITY CITED: SECTIONS 185 AND 1058, WATER CODE.
REFERENCE: SECTIONS 11120, ET SEQ., GOVERNMENT CODE.

Article 2. Adjudicative Proceedings

§ 648. Laws Governing Adjudicative Proceedings.

(a) For purposes of this article, "adjudicative proceeding" means an evidentiary hearing for determination of facts pursuant to which the State Board or a Regional Board formulates and issues a decision.

(b) Incorporation of Applicable Statutes. Except as otherwise provided, all adjudicative proceedings before the State Board, the Regional Boards, or hearing officers or panels appointed by any of those Boards shall be governed by these regulations, chapter 4.5 of the Administrative Procedure Act (commencing with section 11400 of the Government Code), sections 801-805 of the Evidence Code, and section 11513 of the Government Code.

(c) Portions of Administrative Procedure Act Not Applicable. The following articles and sections of chapter 4.5 of the Administrative Procedure Act (commencing with section 11400 of the Government Code) are specifically not included in the procedures governing the conduct of hearings before the State Board, any of the Regional Boards, or hearing officers or panels appointed by those Boards:

Article 8. Language Assistance (except that the procedures for language assistance shall apply to an adjudicative proceeding pursuant to Article 6 [commencing with section 25299.50] of Chapter 6.75 of Division 20 of the Health and Safety Code)

Article 13. Emergency Decision

Article 14. Declaratory Decision

Article 16. Administrative Adjudication Code of Ethics

Except as provided in subdivision (b) of this section, chapter 5 of the Administrative Procedure Act (commencing with section 11500 of the Government Code) does not apply to hearings before the State Board, any of the Regional Boards, or hearing officers or panels appointed by those Boards.

(d) Waiver of Nonstatutory Requirements. The presiding officer may waive any requirements in these regulations pertaining to the conduct of adjudicative proceedings including but not limited to the introduction of evidence, the order of proceeding, the examination or cross-examination of witnesses, and the presentation of argument, so long as those requirements are not mandated by state or federal statute or by the state or federal constitutions.

NOTE: AUTHORITY CITED: SECTIONS 185 AND 1058, WATER CODE.

REFERENCE: SECTIONS 183, 13263 AND 13378, WATER CODE.

HISTORY

1. *Amendment of article 2 heading and repealer and new section filed 3-26-98 as an interim regulation pursuant to Government Code section 11400.20; operative 3-26-98 (Register 98, No. 13). Interim regulations expire 12-31-98 unless earlier amended or repealed.*

2. Pursuant to Government Code section 11400.20(b)(2), interim regulations extended to 3-31-99 by filing of permanent regulations with OAL on 11-25-98. Adoption of permanent regulations disapproved by OAL 1-12-99; resubmitted by the State Water Resources Control Board on 3-10-99; and filed with the Secretary of State on 3-31-99, effective upon filing (Register 99, No. 14).

3. Amendment of subsection (c) filed 4-1-2003; operative 5-1-2003 (Register 2003, No. 14).

§ 648.1. Parties and Other Interested Persons.

(a) The party or parties to an adjudicative proceeding before the Board shall include the person or persons to whom the agency action is directed and any other person whom the Board determines should be designated as a party. The hearing notice may specify a procedure for designation of the parties to a particular adjudicative proceeding.

(b) In a water right proceeding, the party or parties shall include the water right applicant or petitioner, persons who have filed unresolved protests, persons who have filed unresolved objections to a temporary change petition, persons who have filed an unresolved written complaint with the Board concerning the subject matter of the hearing, and any other persons who are designated as parties in accordance with the procedure specified in the hearing notice.

(c) Persons who fail to comply with the procedural requirements specified in the hearing notice for participation as parties in a proceeding may be dismissed as parties to the proceeding.

(d) The Board or presiding officer may provide an opportunity for presentation of policy statements or comments, either orally or in writing, by interested persons who are not participating as parties in the proceeding. Persons presenting nonevidentiary policy statements will not be subject to cross-examination but may be asked to respond to clarifying questions from the Board, staff, or others, at the discretion of the Board or presiding officer. The criteria and procedures applicable to participation in a Board adjudicative proceeding as an interested person may be established in the hearing notice or by the presiding officer. Interested persons will not normally be required to serve copies of their statements on the parties to the proceeding nor will they normally be allowed to participate in cross-examination. The hearing notice may require that any written policy statements proposed to be submitted to the Board, be submitted prior to the hearing. If the requirement for prior submittal of policy statements applies to persons who address the Board or a subcommittee of the Board at a meeting subject to the Bagley-Keene Open Meeting Act (article 9 [commencing with section 11110] of chapter 1 of article 1 of division 3 of title 2 of the Government Code), the requirement should be included in the notice of the meeting. Interested persons are not entitled to receive service of exhibits, testimony, or other documents served on the parties

to the proceeding unless specifically so provided in the hearing notice or by the presiding officer.

NOTE: AUTHORITY CITED: SECTIONS 185 AND 1058, WATER CODE.
REFERENCE: SECTIONS 183, 13263, AND 13378, WATER CODE.

HISTORY

1. *Repealer and new section filed 3-26-98 as an interim regulation pursuant to Government Code section 11400.20; operative 3-26-98 (Register 98, No. 13). Interim regulations expire 12-31-98 unless earlier amended or repealed.*
2. *Pursuant to Government Code section 11400.20(b)(2), interim regulations extended to 3-31-99 by filing of permanent regulations with OAL on 11-25-98. Adoption of permanent regulations disapproved by OAL 1-12-99; resubmitted by the State Water Resources Control Board on 3-10-99; and filed with the Secretary of State on 3-31-99, effective upon filing (Register 99, No. 14).*

§ 648.2. Official Notice.

The Board or presiding officer may take official notice of such facts as may be judicially noticed by the courts of this state. Upon notice to the parties, official notice may also be taken of any generally accepted technical or scientific matter within the Board's field of expertise, provided parties appearing at the hearing shall be informed of the matters to be noticed. The Board or presiding officer shall specify the matters of which official notice is to be taken. Parties shall be given a reasonable opportunity on request to refute officially noticed technical or scientific matters in a manner to be determined by the Board or presiding officer.

NOTE: AUTHORITY CITED: SECTIONS 185 AND 1058, WATER CODE.
REFERENCE: SECTIONS 183, 13263 AND 13378, WATER CODE.

HISTORY

1. *Repealer and new section filed 3-26-98 as an interim regulation pursuant to Government Code section 11400.20; operative 3-26-98 (Register 98, No. 13). Interim regulations expire 12-31-98 unless earlier amended or repealed.*
2. *Pursuant to Government Code section 11400.20(b)(2), interim regulations extended to 3-31-99 by filing of permanent regulations with OAL on 11-25-98. Adoption of permanent regulations disapproved by OAL 1-12-99; resubmitted by the State Water Resources Control Board on 3-10-99; and filed with the Secretary of State on 3-31-99, effective upon filing (Register 99, No. 14).*

§ 648.3. Evidence by Reference.

Public records of the Board that are relevant to the subject of the hearing, and books, reports, and other evidence that have been prepared and published by a public agency, if otherwise admissible, may in the discretion of the Board be received in evidence as exhibits by reference without the necessity of supplying copies to the Board and other parties, provided the original or a copy is in the possession of the Board and the specific file folder or other exact location where it can be found is identified. The party offering an exhibit by

reference shall designate the particular portions on which the party relies. Each exhibit shall be appropriately identified and designated in the record as an exhibit of the party offering the exhibit or an exhibit of Board staff.

NOTE: AUTHORITY CITED: SECTIONS 185 AND 1058, WATER CODE.

REFERENCE: SECTIONS 183, 13263 AND 13378, WATER CODE.

HISTORY

1. *Repealer and new section filed 3-26-98 as an interim regulation pursuant to Government Code section 11400.20; operative 3-26-98 (Register 98, No. 13). Interim regulations expire 12-31-98 unless earlier amended or repealed.*
2. *Pursuant to Government Code section 11400.20(b)(2), interim regulations extended to 3-31-99 by filing of permanent regulations with OAL on 11-25-98. Adoption of permanent regulations disapproved by OAL 1-12-99; resubmitted by the State Water Resources Control Board on 3-10-99; and filed with the Secretary of State on 3-31-99, effective upon filing (Register 99, No. 14).*

§ 648.4. Identification of Witnesses; Presubmission and Presentation of Testimony and Exhibits.

(a) It is the policy of the State and Regional Boards to discourage the introduction of surprise testimony and exhibits.

(b) The hearing notice may require that all parties intending to present evidence at a hearing shall submit the following information to the Board prior to the hearing: the name of each witness whom the party intends to call at the hearing, the subject of each witness' proposed testimony, the estimated time required by the witness to present direct testimony, and the qualifications of each expert witness. The required information shall be submitted in accordance with the procedure specified in the hearing notice.

(c) The hearing notice may require that direct testimony be submitted in writing prior to the hearing. Copies of written testimony and exhibits shall be submitted to the Board and to other parties designated by the Board in accordance with provisions of the hearing notice or other written instructions provided by the Board. The hearing notice may require multiple copies of written testimony and other exhibits for use by the Board and Board staff. Copies of general vicinity maps or large, nontechnical photographs generally will not be required to be submitted prior to the hearing.

(d) Any witness providing written testimony shall appear at the hearing and affirm that the written testimony is true and correct. Written testimony shall not be read into the record unless allowed by the presiding officer.

(e) Where any of the provisions of this section have not been complied with, the presiding officer may refuse to admit the proposed testimony or the proposed exhibit into evidence, and shall refuse to do so where there is a showing of prejudice to any party or the Board. This rule may be modified where a party demonstrates that compliance would create severe hardship.

(f) Rebuttal testimony generally will not be required to be submitted in writing, nor will rebuttal testimony and exhibits be required to be submitted prior to the start of the hearing.

NOTE: AUTHORITY CITED: SECTIONS 185 AND 1058, WATER CODE.

REFERENCE: SECTIONS 183, 13263 AND 13378, WATER CODE.

HISTORY

1. Repealer and new section filed 3-26-98 as an interim regulation pursuant to Government Code section 11400.20; operative 3-26-98 (Register 98, No. 13). Interim regulations expire 12-31-98 unless earlier amended or repealed.

2. Pursuant to Government Code section 11400.20(b)(2), interim regulations extended to 3-31-99 by filing of permanent regulations with OAL on 11-25-98. Adoption of permanent regulations disapproved by OAL 1-12-99; resubmitted by the State Water Resources Control Board on 3-10-99; and filed with the Secretary of State on 3-31-99, effective upon filing (Register 99, No. 14).

§ 648.5. Order of Proceedings.

(a) Adjudicative proceedings shall be conducted in a manner as the Board deems most suitable to the particular case with a view toward securing relevant information expeditiously without unnecessary delay and expense to the parties and to the Board. Adjudicative proceedings generally will be conducted in the following order except that the chairperson or presiding officer may modify the order for good cause:

(1) An opening statement by the chairperson, presiding member, or hearing officer, summarizing the subject matter and purpose of the hearing;

(2) Identification of all persons wishing to participate in the hearing;

(3) Administration of oath to persons who intend to testify;

(4) Presentation of any exhibits by staff of the State or Regional Board who are assisting the Board or presiding officer;

(5) Presentation of evidence by the parties;

(6) Cross-examination of parties' witnesses by other parties and by Board staff assisting the Board or presiding officer with the hearing;

(7) Any permitted redirect and recross-examination;

(b) Questions from Board members or Board counsel to any party or witness, and procedural motions by any party shall be in order at any time. Redirect and recross-examination may be permitted.

(c) If the Board or the presiding officer has determined that policy statements may be presented during a particular adjudicative proceeding, the presiding officer shall determine an appropriate time for presentation of policy statements.

(d) After conclusion of the presentation of evidence, all parties appearing at the hearing may be allowed to present a closing statement.

NOTE: AUTHORITY CITED: SECTIONS 185 AND 1058, WATER CODE.

REFERENCE: SECTION 11126, GOVERNMENT CODE.

History

1. *Repealer and new section filed 3-26-98 as an interim regulation pursuant to Government Code section 11400.20; operative 3-26-98 (Register 98, No. 13). Interim regulations expire 12-31-98 unless earlier amended or repealed.*
2. *Pursuant to Government Code section 11400.20(b)(2), interim regulations extended to 3-31-99 by filing of permanent regulations with OAL on 11-25-98. Adoption of permanent regulations disapproved by OAL 1-12-99; resubmitted by the State Water Resources Control Board on 3-10-99; and filed with the Secretary of State on 3-31-99, effective upon filing (Register 99, No. 14).*

§ 648.5.1. Rules of Evidence.

Adjudicative proceedings will be conducted in accordance with the provisions and rules of evidence set forth in Government Code section 11513. Hearsay evidence is admissible subject to the provisions of Government Code section 11513.

NOTE: AUTHORITY CITED: SECTIONS 185 AND 1058, WATER CODE.
REFERENCE: SECTIONS 183, 13263 AND 13378, WATER CODE.

History

1. *New section filed 3-26-98 as an interim regulation pursuant to Government Code section 11400.20; operative 3-26-98 (Register 98, No. 13). Interim regulations expire 12-31-98 unless earlier amended or repealed.*
2. *Pursuant to Government Code section 11400.20(b)(2), interim regulations extended to 3-31-99 by filing of permanent regulations with OAL on 11-25-98. Adoption of permanent regulations disapproved by OAL 1-12-99; resubmitted by the State Water Resources Control Board on 3-10-99; and filed with the Secretary of State on 3-31-99, effective upon filing (Register 99, No. 14).*

§ 648.6. Alternative Dispute Resolution.

Pursuant to article 5, commencing with section 11420.10, of chapter 4.5 of the Administrative Procedure Act, the State Board or any Regional Board may refer a dispute in a proceeding before it to mediation or nonbinding arbitration to resolve any adjudicative issues pending before it. Under no circumstances may any Board refer an issue to arbitration that is binding upon it with respect to adjudicative issues pending before that Board.

NOTE: AUTHORITY CITED: SECTIONS 185 AND 1058, WATER CODE.
REFERENCE: SECTION 11420.10, GOVERNMENT CODE; AND SECTIONS 183, 13263 AND 13378, WATER CODE.

History

1. *Repealer and new section filed 3-26-98 as an interim regulation pursuant to Government Code section 11400.20; operative 3-26-98 (Register 98, No. 13). Interim regulations expire 12-31-98 unless earlier amended or repealed.*
2. *Pursuant to Government Code section 11400.20(b)(2), interim regulations extended to 3-31-99 by filing of permanent regulations with OAL on 11-25-98. Adoption of permanent regulations disapproved by OAL 1-12-99; resubmitted by the State Water*

Resources Control Board on 3-10-99; and filed with the Secretary of State on 3-31-99, effective upon filing (Register 99, No. 14).

§ 648.7. Informal Hearings.

Unless the hearing notice specifies otherwise, the presiding officer shall have the discretion to determine whether a matter will be heard pursuant to the informal hearing procedures set forth in article 10, commencing with section 11445.20, of chapter 4.5 of the Administrative Procedure Act.

Among the factors that should be considered in making this determination are:

The number of parties,

The number and nature of the written comments received,

The number of interested persons wishing to present oral comments at the hearing,

The complexity and significance of the issues involved, and

The need to create a record in the matter.

An objection by a party, either in writing or at the time of the hearing, to the decision to hold an informal hearing shall be resolved by the presiding officer before going ahead under the informal procedure. Failure to make a timely objection to the use of informal hearing procedures before those procedures are used will constitute consent to an informal hearing. A matter shall not be heard pursuant to an informal hearing procedure over timely objection by the person to whom agency action is directed unless an informal hearing is authorized under subdivision (a), (b), or (d) of section 11445.20 of the Government Code.

NOTE: AUTHORITY CITED: SECTIONS 185 AND 1058, WATER CODE.

REFERENCE: SECTIONS 183, 13263 AND 13378, WATER CODE.

HISTORY

1. *Repealer and new section filed 3-26-98 as an interim regulation pursuant to Government Code section 11400.20; operative 3-26-98 (Register 98, No. 13). Interim regulations expire 12-31-98 unless earlier amended or repealed.*
2. *Pursuant to Government Code section 11400.20(b)(2), interim regulations extended to 3-31-99 by filing of permanent regulations with OAL on 11-25-98. Adoption of permanent regulations disapproved by OAL 1-12-99; resubmitted by the State Water Resources Control Board on 3-10-99; and filed with the Secretary of State on 3-31-99, effective upon filing (Register 99, No. 14).*

§ 648.8. Enforcement Orders and Sanctions.

(a) The presiding officer or Board shall have the power to impose sanctions as specified in Sections 11455.10 and 11455.30 of the Government Code.

(b) If the Board cites a person for contempt for any of the actions listed in Section 11455.10 of the Government Code, then the matter shall be certified to the superior court for contempt proceedings without further review by the

Board. If the Board orders payment of costs pursuant to Section 11455.30 of the Government Code, then the order is effective upon issuance.

(c) Board Review of Enforcement Orders and Sanctions Imposed by Hearing Officers and Hearing Panels.

(1) If the presiding officer is a Board member or other hearing officer or hearing panel authorized by the Board to conduct the hearing, a citation for contempt issued pursuant to Section 11455.10 of the Government Code or an order for payment of costs issued pursuant to Section 11455.30 of the Government Code is subject to review by the Board as provided in this subdivision.

(2) The person or persons subject to the citation or order may request a hearing before the Board within 10 days of entry of the citation or order. The hearing will take place at the next regularly scheduled meeting of that Board, subject to the limitations of the Bagley-Keene Open Meeting Act (Article 9 [commencing with Section 11120] of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code). If the Board determines that the actions listed in Section 11455.10 of the Government Code occurred, then the matter shall be certified to the superior court for contempt proceedings. The Board may affirm, set aside, or modify as appropriate an order entered to pay reasonable expenses pursuant to the provisions of Section 11455.30 of the Government Code.

(3) If the person or persons subject to a citation or order fails to request a hearing before the Board within 10 days of entry of the citation or order, then the citation or order is final and subject to enforcement pursuant to Sections 11455.20 and 11455.30 of the Government Code.

(d) A determination by a Regional Board pursuant to this section is not subject to review by the State Board under Water Code Section 13320.

NOTE: AUTHORITY CITED: SECTIONS 185 AND 1058, WATER CODE.

REFERENCE: SECTIONS 183, 13263 AND 13378, WATER CODE.

HISTORY

1. Repealer and new section filed 3-26-98 as an interim regulation pursuant to Government Code section 11400.20; operative 3-26-98 (Register 98, No. 13). Interim regulations expire 12-31-98 unless earlier amended or repealed.

2. Pursuant to Government Code section 11400.20(b)(2), interim regulations extended to 3-31-99 by filing of permanent regulations with OAL on 11-25-98. Adoption of permanent regulations disapproved by OAL 1-12-99; resubmitted by the State Water Resources Control Board on 3-10-99; and filed with the Secretary of State on 3-31-99, effective upon filing (Register 99, No. 14).

Article 3. Rulemaking and Informational Proceedings

§ 649. Scope.

(a) "Rulemaking proceedings" shall include any hearings designed for the adoption, amendment, or repeal of any rule, regulation, or standard of general

application, which implements, interprets or makes specific any statute enforced or administered by the State and Regional Boards.

(b) "Informational proceedings" shall include any hearings designed to gather and assess facts, opinions, and other information relevant to any matters within the jurisdiction of the Boards and whose primary purposes are to assist the Boards in the formulation of policy or guidelines for future Board action; to inform the public of Board policies, reports, orders, plans, or findings; and to obtain public comment and opinion with respect to such policies, reports, orders, plans, or findings, or to adopt such policies, reports, orders plans, or findings.

NOTE: AUTHORITY CITED: SECTIONS 185 AND 1058, WATER CODE.

REFERENCE: SECTION 183, WATER CODE, AND SECTIONS 11340 ET SEQ., GOVERNMENT CODE.

§ 649.1. Rulemaking Proceedings.

Proceedings to adopt regulations, including notice thereof, shall, as a minimum requirement, comply with all applicable requirements established by the Legislature (Government Code Section 11340, et seq.). This section is not a limitation on additional notice requirements contained elsewhere in this chapter.

NOTE: AUTHORITY CITED: SECTIONS 185 AND 1058, WATER CODE.

REFERENCE: SECTION 183, WATER CODE, AND SECTIONS 11340 ET SEQ., GOVERNMENT CODE.

§ 649.2. Notice of Informational Proceedings.

The notice of informational proceedings shall include:

(1) A statement of the nature and purpose of the proceedings;

(2) A statement of the time, date, and place of each proceeding.

Notice of informational proceedings shall, as a minimum requirement, comply with applicable requirements of Section 647.2. This section is not a limitation on additional notice requirements contained elsewhere in this chapter.

NOTE: AUTHORITY CITED: SECTIONS 185 AND 1058, WATER CODE.

REFERENCE: SECTION 183, WATER CODE, AND SECTIONS 11340 ET SEQ., GOVERNMENT CODE.

§ 649.3. Order of Procedure.

Rulemaking or informational proceedings shall be conducted in the following order; provided, however, that the Chairperson or presiding member may modify the order for good cause:

(1) An opening statement by the Chairperson or presiding member summarizing the subject matter and purpose of the proceeding.

(2) Presentation of comments or evidence by the staff of the Regional or State Board.

(3) Presentation of comments or evidence by interested persons.

NOTE: AUTHORITY CITED: SECTIONS 185 AND 1058, WATER CODE.

REFERENCE: SECTION 183, WATER CODE, AND SECTIONS 11340 ET SEQ., GOVERNMENT CODE.

§ 649.4. Prepared Written Evidence.

The State or Regional Board may require that prepared written testimony or other evidence be submitted in advance of any rulemaking or informational proceeding for the purpose of the orderly consideration of issues at the proceeding.

NOTE: AUTHORITY CITED: SECTIONS 185 AND 1058, WATER CODE.

REFERENCE: SECTION 183, WATER CODE, AND SECTIONS 11340 ET SEQ., GOVERNMENT CODE.

§ 649.5. Questioning.

Questions from Board members, staff or legal counsel are in order at any time. Persons wishing to have prior evidence or comments clarified should request the Chairperson, presiding member, or hearing officer, to obtain the answer or clarification. The Chairperson, presiding member, or hearing officer, may allow additional answers to be given as appropriate based on, but not limited to, the following considerations:

(1) The need to accommodate all the various interests within the time allotted for the proceeding;

(2) The area of inquiry to be pursued by further questioning;

(3) The adequacy of questioning already provided in covering the area of inquiry; and

(4) The alternative of permitting the questions to be submitted in writing, with such questions and answers becoming part of the record.

NOTE: AUTHORITY CITED: SECTIONS 185 AND 1058, WATER CODE.

REFERENCE: SECTION 183, WATER CODE, AND SECTIONS 11340 ET SEQ., GOVERNMENT CODE.

Article 4. Subpoenas

§ 649.6. Subpoenas.

(a) Upon its own motion or upon request of any person, the Board may issue subpoenas and subpoenas duces tecum for attendance at a proceeding and for production of documents at any reasonable time and place or at a hearing.

(b) Article 11 (commencing with section 11450.05) and article 12 (commencing with section 11455.10) of chapter 4.5 of part 1 of division 3 of title 2 of the Government Code shall apply to the issuance of a subpoena or subpoena duces tecum in an adjudicative proceeding. The Board may also compel attendance, testimony, or the production of evidence as provided in article 3 (commencing with section 1090) of chapter 3 of part 1 of division 2 of the Water Code.

(c) Section 1086 of the Water Code does not apply to any witness required to attend an adjudicative proceeding pursuant to article 11 (commencing with section 11450.05) of chapter 4.5 of part 1 of division 3 of title 2 of the Government Code.

(d) Article 5 (commencing with section 1105) of chapter 3 of part 1 of division 2 of the Water Code applies to any person required to testify or produce any evidence pursuant to a subpoena or subpoena duces tecum or pursuant to a notice issued under section 11450.50 of the Government Code.

NOTE: AUTHORITY CITED: SECTIONS 185 AND 1058, WATER CODE.
REFERENCE: SECTIONS 1080 AND 13221, WATER CODE.

HISTORY

1. Repealer and new section filed 3-26-98 as an interim regulation pursuant to Government Code section 11400.20; operative 3-26-98 (Register 98, No. 13). Interim regulations expire 12-31-98 unless earlier amended or repealed.
2. Pursuant to Government Code section 11400.20(b)(2), interim regulations extended to 3-31-99 by filing of permanent regulations with OAL on 11-25-98. Adoption of permanent regulations disapproved by OAL 1-12-99; resubmitted by the State Water Resources Control Board on 3-10-99; and filed with the Secretary of State on 3-31-99, effective upon filing (Register 99, No. 14).

CHAPTER 2. APPROPRIATION OF WATER

Article 1. General Provisions

§ 650. Application for Water.

Any person who wishes to appropriate unappropriated water pursuant to Water Code Section 1202 shall file an application and comply with the provisions of the subchapter.

NOTE: AUTHORITY CITED: SECTION 1058 AND 1252, WATER CODE.
REFERENCE: SECTIONS 1200, 1260 AND 1375, WATER CODE.

HISTORY

1. Amendment filed 5-9-74 as procedural and organizational; effective upon filing (Register 74, No. 19). For prior history, see Register 60, No. 5.
2. Renumbering and amendment of former section 650 to section 705 and new section 650 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).
3. Editorial correction of section (Register 92, No. 21).

§ 651. Policy.

In acting on applications, petitions for changes, and petitions for extensions of time where reclaimed water is available or water can be reused or reclaimed, the amount of water specified in the application or permit shall be reduced to the extent and in the quantity that, and so long as, the use of reclaimed water or reuse of water is reasonable.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: SECTIONS 275, 461, 1253 AND 1257, WATER CODE.

HISTORY

1. New section filed 3-10-60; effective thirtieth day thereafter (Register 60, No. 5).
2. Amendment filed 12-7-67 as organizational and procedural; effective upon filing (Register 67, No. 49).

3. Renumbering and amendment of former Section 651 to Section 675, and renumbering and amendment of former Section 654.4 to 651 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 77, No. 5.

§ 652. Application Must Be Accompanied by Minimum Filing Fee.

HISTORY

1. New section filed 12-1-55; effective thirtieth day thereafter (Register 55, No. 17).
2. Renumbering from 651 filed 3-10-60; effective thirtieth day thereafter (Register 60, No. 5).
3. Renumbering and amendment of Section 652 to Section 676 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

§ 652.5. Application Fees for Small Hydroelectric Projects.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: SECTION 1525.5, WATER CODE.

HISTORY

1. New section Schedule 1 filed 6-17-83; effective thirtieth day thereafter (Register 83, No. 25).
2. Renumbering and amendment of former Section 652.5 and Schedule 1 to Section 677 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

§ 653. Applications for Water Where an Existing Right Is Claimed.

NOTE: AUTHORITY CITED: SECTIONS 185 AND 1058, WATER CODE.
REFERENCE: SECTIONS 1201, 1202, 1253, 1255 AND 1375, WATER CODE.

HISTORY

1. New section filed 3-23-73; effective thirtieth day thereafter (Register 73, No. 12).
2. Amendment filed 3-11-81; effective thirtieth day thereafter (Register 81, No. 11).
3. Renumbering and amendment of Section 653(a) to Section 695, and renumbering and amendment of Section 653(b)-(g) to Section 731 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

§ 654. Documents That Must Be Sworn To.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: PART 2, DIVISION 2, WATER CODE.

HISTORY

1. New section filed 10-9-73 as procedural; effective upon filing (Register 73, No. 41).
2. Renumbering and amendment of Section 654 to Section 711 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

§ 654.4. Policy.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: SECTION 275, CHAPTER 2.5, DIVISION 1 AND PART 2, DIVISION 2, WATER CODE.

HISTORY

1. New section filed 1-28-77; effective thirtieth day thereafter (Register 77, No. 5).

2. Renumbering and amendment of former Section 654.4 to Section 651 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

Article 2. Definitions

Subarticle 1. General

§ 655. Application.

"Application" means the form entitled "Application to Appropriate Water," the "Environmental Information Form," applicable fees, and the maps required by this subchapter. "Application" includes the form entitled "Supplement to Application" when:

(a) The purpose of use is municipal, industrial, mining, power, temperature control or any other use that is not listed in paragraph 5 of the application; or

(b) The applicant applies to store 25 acre-feet or more of water. These forms are provided by the board.

NOTE: AUTHORITY CITED: SECTIONS 1058, 1252 AND 1530, WATER CODE.

REFERENCE: SECTIONS 1260, 1375 AND 1525, WATER CODE; AND SECTIONS 21080, 21080.1 AND 21160, PUBLIC RESOURCES CODE.

HISTORY

1. Amendment filed 12-1-55; effective thirtieth day thereafter (Register 55, No. 17).
2. Amendment filed 3-10-60; effective thirtieth day thereafter (Register 60, No. 5).
3. Renumbering and amendment of former Section 655 to Section 696, and new Section 655 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).
4. Amendment of first paragraph and Note filed 12-23-2003 as an emergency; operative 1-1-2004 (Register 2003, No. 52). Pursuant to Water Code section 1530 this rulemaking action remains in effect until revised by the State Water Resources Control Board.

§ 656. Complete and Incomplete Applications.

(a)Complete Application.An application shall be considered complete when the board has certified, in writing, that the applicant has fully and completely disclosed all information required in the "application" according to instructions set forth in the form and this subchapter, and has paid the applicable fees.

(b)Incomplete Application.An incomplete application is one that is substantially complete except that it fails in some manner to fully conform to the law or the regulations of the board. It includes an application determined to be incomplete pursuant to Sections 65920 et seq. of the Government Code and an application determined to be defective pursuant to Section 1270 of the Water Code. See Section 675 regarding substantial compliance.

NOTE: AUTHORITY CITED: SECTIONS 1058, 1252 AND 1530, WATER CODE.

REFERENCE: SECTIONS 1270 AND 1525, WATER CODE; AND SECTIONS 65940, 65941 AND 65943, GOVERNMENT CODE.

History

1. *Renumbering and amendment of former Section 656 to Section 698, and renumbering and amendment of Section 692 to 656 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Registers 78, No. 31 and 17, No. 5.*
2. *Amendment of subsection (a) and Note filed 12-23-2003 as an emergency; operative 1-1-2004 (Register 2003, No. 52). Pursuant to Water Code section 1530 this rulemaking action remains in effect until revised by the State Water Resources Control Board.*

§ 657. Regulation of Water.

Regulation of water means the direct diversion of water to a tank or reservoir in order that the water may be held for use at a rate other than the rate at which it may be conveniently diverted from its source. For licensing purposes, refill, in whole or in part, held in a tank or reservoir for less than 30 days shall be considered regulation of water.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: SECTIONS 1240, 1250, 1253 AND 1260, WATER CODE.

History

1. *Amendment filed 12-1-55; effective thirtieth day thereafter (Register 55, No. 17).*
2. *Amendment filed 3-19-64; effective thirtieth day thereafter (Register 64, No. 6).*
3. *Renumbering and amendment of former Section 657 to Section 697, and new Section 657 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).*

§ 657.1. Recreational Reservoirs for Subdivisions.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: PART 2 (COMMENCING WITH SECTION 1200) OF DIVISION 2, WATER CODE.

History

1. *New section filed 2-27-73; effective thirtieth day thereafter (Register 73, No. 9).*
2. *Repealer filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).*

§ 657.2. Stockwatering Reservoirs.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: PART 2 (COMMENCING WITH SECTION 1200) OF DIVISION 2, WATER CODE.

History

1. *New section filed 3-8-74; effective thirtieth day thereafter (Register 74, No. 10).*
2. *Repealer filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).*

§ 658. Storage of Water.

Storage of water means the collection of water in a tank or reservoir during a time of higher stream flow which is held for use during a time of deficient stream flow. For licensing purposes all initial collections within the collection season plus refill, in whole or in part, held in a tank or reservoir for more than 30 days shall be considered water diverted for storage except as provided in Section 735(c).

History

1. Amendment filed 12-1-55; effective thirtieth day thereafter (Register 55, No. 17).

2. Renumbering and amendment of former Section 658 to Section 699, and new Section 658 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

Subarticle 2. Beneficial Uses

§ 659. Beneficial Use of Water.

Beneficial use of water includes those uses defined in this subarticle. The board will determine whether other uses of water are beneficial when considering individual applications to appropriate water.

Note: Authority cited: Sections 1058 and 1252, Water Code.

Reference: Section 1240, Water Code.

History

1. Repealer of Section 659 and new Article 2.5 (Sections 659-660) filed 10-12-79; effective thirtieth day thereafter (Register 79, No. 41).

2. Renumbering and amendment of former Section 659 to Section 735, and new Section 659 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

§ 660. Domestic Uses.

Domestic use means the use of water in homes, resorts, motels, organization camps, camp grounds, etc., including the incidental watering of domestic stock for family sustenance or enjoyment and the irrigation of not to exceed one-half acre in lawn, ornamental shrubbery, or gardens at any single establishments. The use of water at a camp ground or resort for human consumption, cooking or sanitary purposes is a domestic use.

Note: Authority cited: Section 1058, Water Code.

Reference: Section 1254 and 1260, Water Code.

History

1. Renumbering and amendment of former Section 660 to Section 735, and renumbering and amendment of Section 661 to Section 660 filed 1 -16-87; effective thirtieth day thereafter (Register 87, No. 10).

§ 661. Irrigation Use.

Irrigation use includes any application of water to the production of irrigated crops or the maintenance of large areas of lawns, shrubbery, or gardens.

Note: Authority cited: Section 1058, Water Code.

Reference: Sections 1254 and 1260, Water Code.

History

1. Amendment filed 12-1-55; effective thirtieth day thereafter (Register 55, No. 17).

2. Renumbering and amendment of former Section 661 to Section 660, and renumbering and amendment of Section 662 to 661 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

§ 662. Power Use.

Power use means the use of water for hydroelectric and hydromechanical power.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: SECTIONS 1260 AND 1263, WATER CODE.

HISTORY

1. Renumbering and amendment of former Section 662 to Section 661, and renumbering and amendment of Section 663 to Section 662 filed 1 -16-87; effective thirtieth day thereafter (Register 87, No. 10).

§ 662.5. Frost Protection Use.

NOTE: AUTHORITY CITED: SECTIONS 185 AND 1058, WATER CODE.
REFERENCE: SECTION 1253, WATER CODE.

HISTORY

1. New section filed 10-12-79; effective thirtieth day thereafter (Register 79, No. 41).
2. Renumbering and amendment of Section 662.5 to Section 671 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

§ 663. Municipal Use.

Municipal use means the use of water for the municipal water supply of a city, town, or other similar population group, and use incidental thereto for any beneficial purpose.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: SECTIONS 1260 AND 1264, WATER CODE.

HISTORY

1. Amendment filed 12-1-55; effective thirtieth day thereafter (Register 55, No. 17).
2. Renumbering and amendment of former Section 663 to Section 662, and renumbering and amendment of Section 664 to Section 663 filed 1 -16-87; effective thirtieth day thereafter (Register 87, No. 10).

§ 664. Mining Use.

Mining use means any use of water is for mining processes such as hydraulicing, drilling, and on concentrator tables.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: SECTION 1260 AND 1265, WATER CODE.

HISTORY

1. Amendment filed 12-1-55; effective thirtieth day thereafter (Register 55, No. 17).
2. Renumbering and amendment of former Section 664 to Section 663, and renumbering and amendment of Section 665 to 664 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

§ 665. Industrial Use.

Industrial use means the use of water for the purposes, not more specifically defined herein, of commerce, trade or industry.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: SECTION 1260, WATER CODE.

HISTORY

1. Renumbering and amendment of former Section 665 to Section 664, and renumbering and amendment of Section 666 to Section 665 filed 1 -16-87; effective thirtieth day thereafter (Register 87, No. 10).
2. Editorial correction amending section (Register 2005, No. 17).

§ 666. Fish and Wildlife Preservation and Enhancement Use.

For purposes of specifying a beneficial use in an application to appropriate unappropriated water, fish and wildlife preservation and enhancement use means using water to maintain or provide habitat or other benefit for fish and wildlife by taking water under control as in the following examples:

(a) The collection or diversion of water to storage for either retention in the reservoir or release downstream for the purpose of preservation or enhancement of fish or wildlife; or

(b) Direct diversion of water for the purpose of preservation or enhancement of fish or wildlife.

This category of water use includes the use of water for the raising of fish or other organisms for scientific purposes or release in the waters of the state.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: CALIFORNIA TROUT, INC. V. SWRCB, 90 CAL.APP.3D 816, 153, CAL.RPTR. 672 (1979); FULLERTON V. STATE WATER RESOURCES CONTROL BOARD, 90 CAL.APP.3D 590; 153 CAL.RPTR. 518 (1979); AND SECTIONS 1243 AND 1260, WATER CODE.

HISTORY

1. Renumbering and amendment of former Section 666 to Section 665, and renumbering and amendment of Section 667.5 to Section 666 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

§ 667. Aquaculture Use.

Aquaculture use means the use of water for raising fish or other organisms for commercial purposes, or large scale private use in which the fish or organisms will not be released in waters of the state.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: SECTION 1260, WATER CODE.

HISTORY

1. Amendment filed 12-1-55; effective thirtieth day thereafter (Register 55, No. 17).
2. Amendment filed 11-24-71; effective thirtieth day thereafter (Register 71, No. 48).
3. Renumbering and amendment of former Section 667 to Section 668, and new Section 667 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

§ 667.5. Fish and Wildlife Protection and Enhancement.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

History

1. Renumbering and amendment of former Section 667.5 to Section 666 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

§ 668. Recreational Use.

Recreational use means the use of water for resorts or other recreational establishments, boating, swimming, and fishing, and may include water which is appropriated by storage and either retained in the reservoir or released downstream to support these purposes. Use of water at a camp ground or resort for human consumption, cooking or sanitary purposes is a domestic use and irrigation of golf courses is an irrigation use.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 1243 AND 1260, WATER CODE.

History

1. Amendment filed 12-1-55 effective thirtieth day thereafter (Register 55, No. 17).
2. Amendment filed 3-10-60; effective thirtieth day thereafter (Register 60, No. 5).
3. Renumbering and amendment of former Section 668 to Section 669, and renumbering and amendment of Section 667 to Section 668 filed 1 -16-87; effective thirtieth day thereafter (Register 87, No. 10).

§ 668.5. Water Quality Use.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

History

1. New section filed 11-24-71; effective thirtieth day thereafter (Register 71, No. 48).
2. Renumbering and amendment of former Section 668.5 to Section 670 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

§ 669. Stockwatering Use.

Stockwatering use means the use of water for commercial livestock.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTION 1260, WATER CODE.

History

1. Renumbering and amendment of former Section 669 to Section 706, and renumbering and amendment of Section 668 to Section 669 filed 1 -16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Registers 60, No. 5 and 55, No. 17.

§ 669.5. Name and Address of Applicant.

History

1. New section filed 3-19-64; effective thirtieth day thereafter (Register 64, No. 6).
2. Renumbering and amendment of former Section 669.5 to Section 707 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

§ 670. Water Quality Use.

Water quality use includes appropriation of water by storage to be released for the purpose of protecting or enhancing the quality of other waters which are put to beneficial uses.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: SECTIONS 1242.5 AND 1260, WATER CODE.

HISTORY

1. *Renumbering and amendment of former Section 668.5 to Section 670 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For history of former Section 670, see Registers 74, No. 19 and 71, No. 48.*

§ 670.5. Supplement to Application May Be Required.

HISTORY

1. *New section filed 3-19-64; effective thirtieth day thereafter (Register 64, No. 6).*
2. *Renumbering and amendment of former Section 670.5 to Section 708 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).*

§ 670.6. Instream Beneficial Use Assessment.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: SECTIONS 106.7 AND 1250.5, WATER CODE, AND SECTION 21069, PUBLIC RESOURCES CODE.

HISTORY

1. *New section filed 12-13-82 as an emergency; effective upon filing (Register 82, No. 51).*
2. *Order of Repeal of 12-13-82 order filed 12-13-82 by OAL pursuant to Government Code Section 11349.6 (Register 82, N. 51).*
3. *New section filed 3-2-83 as an emergency; effective upon filing (Register 83, No. 11). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6-30-83.*
4. *Order of Repeal of subsection (h)(2) filed 3-10-83 by OAL pursuant to Government Code Section 11349.6 (Register 83, No. 11).*
5. *Emergency language filed 3-2-83 repealed by operation of Government Code Section 11346.1 (Register 83, No. 32).*
6. *New section filed 8-1-83; effective upon filing pursuant to Government Code Section 11364.2(d) (Register 83, No. 32).*
7. *Renumbering and amendment of former Section 670.6 to Section 709 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).*

§ 671. Frost Protection Use.

Frost protection use means the application of water to crops by fine sprays,mists, or sprinklers for the purpose of preventing damage by frost.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: SECTIONS 1253 AND 1260, WATER CODE.

HISTORY

1. *Amendment filed 12-1-55; effective thirtieth day thereafter (Register 55, No. 17).*

2. Amendment of subsections (c) and (e), and new subsections (g) and (h) filed 5-18-79; effective thirtieth day thereafter (Register 79, No. 20).

3. Renumbering and amendment of former Section 671 to Section 710, and renumbering and amendment of former Section 662.5 to Section 671 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 19, No. 41.

§ 672. Heat Control Use.

Heat control use means the application of water to crops by fine sprays, mists, or sprinklers for the purpose of preventing damage by high temperatures.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 1253 AND 1260, WATER CODE.

HISTORY

1. New section filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

§ 673. General Requirements.

HISTORY

1. Amendment filed 3-10-60; effective thirtieth day thereafter (Register 60, No. 5).

2. Renumbering and amendment of Section 673 to Section 715 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

§ 674. Requirements for Irrigation Purposes.

HISTORY

1. Amendment filed 3-10-60; effective thirtieth day thereafter (Register 60, No. 5).

2. Renumbering and amendment of Section 674 to Section 719 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

Article 3. How Applications Are Processed

§ 675. Substantial Compliance.

Upon receipt, an application will be reviewed for compliance with the requirements of the Water Code and this subchapter. An application will be accepted for filing when it substantially complies with the requirements. Substantial compliance means that the application is made in a good faith attempt to conform to the rules and regulations of the board and to the law, and the information submitted and the form of submission are sufficient in view of the particular circumstances to fulfill the purpose of the requirements.

NOTE: AUTHORITY CITED: SECTION 1058 AND 1252, WATER CODE.

REFERENCE: SECTION 1270, WATER CODE.

HISTORY

1. Amendment filed 3-3-78 as procedural and organizational; effective upon filing (Register 78, No. 9).

2. Renumbering and amendment of former Section 675 to Section 720, and renumbering and amendment of Section 651 to Section 675 filed 1 -16-87; effective thirtieth day

thereafter (Register 87, No. 10). For prior history, see Registers 67, No. 49 and 60, No. 5.

§ 676. Filing Fees.

An application will not be accepted for initial review or filing unless it is accompanied by the filing fee required by chapter 5 (commencing with section 1061) of this division. If after the initial review of an application described in section 675 the board does not accept the application for filing, the board shall refund the application filing fee, minus the $250 non-refundable initial review fee. The board may cancel an application for failure to pay any annual fee for the application when due.

NOTE: AUTHORITY CITED: SECTIONS 1058, 1252 AND 1530, WATER CODE.
REFERENCE: SECTION 1525, WATER CODE.

HISTORY

1. *Renumbering and amendment of former Section 676 to Section 721, and renumbering and amendment of Section 652 to Section 676 filed 1 -16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Registers 79, No. 20; 60, No. 5; and 55, No. 17.*
2. *Amendment of section and Note filed 12-23-2003 as an emergency; operative 1-1-2004 (Register 2003, No. 52). Pursuant to Water Code section 1530 this rulemaking action remains in effect until revised by the State Water Resources Control Board.*
3. *Amendment filed 10-14-2004 as an emergency; operative 10-14-2004 (Register 2004, No. 42). Pursuant to Water Code section 1530, this rulemaking action remains in effect until revised by the State Water Resources Control Board.*

§ 677. Application Fees for Small Hydroelectric Projects.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: SECTION 1525.5, WATER CODE.

HISTORY

1. *New section and Schedule 1 filed 6-17-83 effective thirtieth day thereafter (Register 83, No. 25). For prior history, see Register 82, No. 51.*
2. *Renumbering and amendment of former Section 677 to Section 718, and renumbering and amendment of Section 652.5 to Section 677 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 83, No. 25).*
3. *Repealer of section and schedule 1 filed 12-23-2003 as an emergency; operative 1-1-2004 (Register 2003, No. 52). Pursuant to Water Code section 1530 this rulemaking action remains in effect until revised by the State Water Resources Control Board.*

§ 678. Determination of Completeness.

(a) Upon acceptance of an application to appropriate water, the board staff shall, within 30 days, determine whether an application is complete by applying the criteria set forth in this subchapter.

(b) In the event that the board staff determines that the application is incomplete, it shall, in writing, notify the applicant of such determination, shall

specify those parts of the application that are incomplete, and shall indicate the manner in which they can be made complete.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTION 1270, WATER CODE; SECTION 65943, GOVERNMENT CODE.

HISTORY

1. *Amendment filed 12-1-55; effective thirtieth day thereafter (Register 55, No. 17).*
2. *Renumbering and amendment of former Section 678 to Section 723, and renumbering and amendment of Section 692.3 to Section 678 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history; see Register 78, No. 3).*

§ 679. Cancellation of Application.

Upon receiving an incomplete application made in a bona fide attempt to conform to the rules of the board and to the law, the board will notify the applicant in what respect his application is incomplete and that unless within 60 days an amended and completed application is filed or good cause is shown for extension of time, following the notice required in Section 678, the application will be subject to cancellation without further notice. Unless within the time prescribed, or such further time as may be allowed for good cause consistent with the provisions of Section 680, an amended and completed application is filed with the board, the application may be cancelled without further notice.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTION 1270 AND 1271, WATER CODE.

HISTORY

1. *Renumbered from former Section 680. Former Section 679 repealer filed 12-1-55; effective thirtieth day thereafter (Register 55, No. 17).*
2. *Amendment filed 3-10-60; effective thirtieth day thereafter (Register 60, No. 5).*
3. *Amendment filed 12-7-67 as organizational and procedural; effective upon filing (Register 67, No. 49).*
4. *Renumbering and amendment of former Section 679 to Section 716, and renumbering and amendment of Section 695 to 679 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).*

§ 680. Applications Not Made in a Bona Fide Attempt to Conform to Rules and Law.

Applications which are not made in a bona fide attempt to conform to the rules of the board and to the law, including those in which no effort, or only a token effort, is made to supply one or more of the items of information required by Sections 1260 through 1266 of the Water Code, will not be accepted for filing. When the board's staff determines not to accept such an application, it shall notify the applicant within 30 days of receipt of the application.

NOTE: AUTHORITY CITED: SECTION 1058 AND 1252, WATER CODE.

REFERENCE: SECTIONS 1260 AND 1270, WATER CODE.

History

1. *Renumbering of former Section 681 and amendment filed 12-1-55; effective thirtieth day thereafter (Register 55, No. 17).*
2. *Amendment filed 3-19-64; effective thirtieth day thereafter (Register 64, No. 6).*
3. *Amendment filed 11-24-71; effective thirtieth day thereafter (Register 71, No. 48).*
4. *Amendment filed 11-25-80; effective thirtieth day thereafter (Register 80, No. 48).*
5. *Renumbering and amendment of former Section 680 to Section 717, and renumbering and amendment of Section 696 to Section 680 filed 1 -16-87; effective thirtieth day thereafter (Register 87, No. 10).*

§ 681. Time to Complete and Extensions Thereof.

Upon receipt of a request for an extension of time to complete an application, if good cause is shown the board will grant such time as appears reasonably necessary, Good cause requires a satisfactory showing that a diligent effort has been made to complete the application within the time previously allowed and that failure to do so has been occasioned by obstacles which could not reasonably be avoided. Lack of finances, occupation with other work, physical disability, and other conditions incident to the person and not the enterprise will not generally be accepted as good cause for delay. The board may, in its discretion, require such showing of good cause to be made at a hearing upon notice to the applicant and other interested parties.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 1270 AND 1271, WATER CODE.

History

1. *Renumbering of former Section 682 and amendment filed 12-1-55; effective thirtieth day thereafter (Register 55, No. 17).*

2.Renumbering and amendment of former Section 681 to Section 724, and renumbering and amendment of Section 614 to Section 681 filed 1 -16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 60, No. 5.

§ 682. Additional Information.

After an application has been determined to be complete, the applicant shall not be required to submit any new or added information which is not set forth or required in or by this Subchapter. An applicant may, however, submit any new or added information on his own behalf, and the board may, in its discretion, hear or consider such information in deciding whether to approve the application.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTION 65944, GOVERNMENT CODE.

HISTORY

1. Renumbering and amendment of former Section 692.5 to Section 682 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 78, No. 31.

§ 683. Supplemental Information.

(a) Notwithstanding the provisions of Section 682 the board may, in the course of processing the application, and at any time prior to rendering a decision on the application, request an applicant to clarify, amplify, correct, or otherwise supplement the information required in or by this Subchapter and to obtain information necessary to comply with the Public Resources Code Section 21000 et seq.

(b) Failure by an applicant to comply with a written request for information pursuant to subdivision (a) of this section within a reasonable time and in a responsive manner may be cause for the board to cancel or reject the application pursuant to Government Code Section 65956(c) or the State Administrative Manual Permit Guidelines Section 1099, adopted on January 31, 1978.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 65944 AND 65956(B), GOVERNMENT CODE; AND SECTION 1255, WATER CODE.

HISTORY

1. Renumbering and amendment of former Section 692.7 to Section 683 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 78, No. 31.

§ 684. Issuance of Notice.

(a) As soon as practicable after receipt of a complete application and, if an instream beneficial use assessment is required by Water Code Section 1250.5 (for a project which proposes the development of a small hydroelectric project) as soon as practicable after the determination that the instream beneficial use assessment is adequate, a notice will be issued by the board. The applicant will be directed to post or publish it.

(b) If a hearing on an application is delayed for more than one year after the close of the protest period, the board may issue a new notice and direct the applicant to post or publish it. The board will take such action when, in its judgment, the record does not reflect up-to-date circumstances because of changes in the project or in the circumstances of affected downstream water users or other interested persons. The board will mail a copy of the new notice to all persons who filed a protest to the application in response to the original notice and will inform them that they may either submit a new protest or stand on their existing protest.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 1300, 1310 AND 1320, WATER CODE.

HISTORY

1. Renumbering and amendment of former Section 712 to Section 684 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Registers 73, No. 10 and 60, No. 5.

§ 685. Effect of Issuance of Notice.

Issuance of a notice of application shall not be construed as a final determination that the application is complete in all details.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 65941, 65943 AND 65944, GOVERNMENT CODE; AND SECTION 1270, WATER CODE.

HISTORY

1. Renumbering and amendment of former Section 701 and amendment to Subsection 685 filed 12-1-55; effective thirtieth day thereafter (Register 55, No. 17).
2. Amendment filed 3-19-64; effective thirtieth day thereafter (Register 64, No. 6).
3. Amendment of subsections (b) and (c) filed 3-3-78 as procedural and organizational; effective upon filing (Register 78, No. 9).
4. Repealer of former Section 685 and renumbering and amendment of Section 713 to Section 685 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

Article 4. Requirements for Separate Applications and Joint Applications

§ 686. Separate Applications for Consumptive and Nonconsumptive Uses.

Separate applications shall be filed for consumptive and nonconsumptive uses except that an application for either consumptive or nonconsumptive purposes may include water for strictly incidental domestic, power, industrial, stockwatering, recreational, fish and wildlife enhancement, or water quality uses. For the purpose of this section, nonconsumptive use is one which returns substantially all of the water to a surface stream or other surface body of water. Incidental power is generated when operation of the turbine is incidental to the movement of water to meet requirements for other purposes. Notice of a petition to add incidental uses may be given at the board's discretion, in accordance with Section 795, Article 15 of this subchapter.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTION 1252, WATER CODE.

HISTORY

1. Renumbering and amendment of former Section 698 to Section 686 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 80, No. 48.

§ 687. Separate Application for Each Diversion.

When water is to be diverted at two or more places, a separate application shall be filed for each, except that one application will be accepted when:

(a) Successive diversions are made of water from the same stream system for a nonconsumptive use,

(b) The water will be used for common purposes at adjoining places of use and when the works required for each diversion will be constructed simultaneously with all the other units of the project. Units of a project to be constructed by stages at different times which involve separate diversions of water shall be covered by separate applications, or

(c) Water will be stored in several reservoirs in the same watershed or general locality, provided there shall not be included in one application more than 5 reservoirs.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTION 1252, WATER CODE.

HISTORY

1. *Renumbering and amendment of former Section 699 to Section 687 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Registers 64, No. 6 and 55, No. 17.*
2. *Editorial correction amending subsection (b) (Register 2005, No. 17).*

§ 688. Separate Applications for Separately Owned Places of Use.

Separate applications shall be filed when two or more parties desire to cooperate in the construction and operation of a common system for direct diversion of water (not proposing the use of water stored in a reservoir) but will use water on separately owned parcels. Such applications may be filed simultaneously and thereby establish an equal priority, either by personal delivery of the applications or by forwarding them in the same envelope.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTION 1252, WATER CODE.

HISTORY

1. *New article 7 (ss 688 and 689) filed 12-1-55; effective thirtieth day thereafter (Register 55, No. 17).*
2. *Amendment filed 3-10-60; effective thirtieth day thereafter (Register 60, No. 5).*
3. *Amendment of subsection (b) filed 3-3-78 as procedural and organizational; effective upon filing (Register 78, No. 9).*
4. *Renumbering and amendment of former Section 688 to Section 733, and renumbering and amendment of Section 700 to Section 688 filed 1 -16-87; effective thirtieth day thereafter (Register 87, No. 10).*

§ 689. Separate Application for Frost Protection.

Direct diversion for frost protection shall be the subject of a separate application, except where such uses are clearly incidental to other uses is areas

other than in Napa Valley. Existing permits for frost protection direct diversion combined with other uses may be separated into separate permits when an order is issued allowing an extension of time or a change in the permit. Separate licenses or a permit and a license may be issued upon completion of the separate portions of the project if appropriate.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTION 1252, WATER CODE.

HISTORY

1. Renumbering and amendment of former Section 689 to Section 722, and renumbering and amendment of Section 648.5 to Section 689 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 79, No. 41.

§ 690. Application by an Agency Representing Users Within a Combined Place of Use.

An application by an agency proposing to serve water to several separately owned parcels of land will be accepted when that agency is competent to take title to the water right (for example, an irrigation district or a mutual water company).

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTION 1252, WATER COD.

HISTORY

1. Renumbering and amendment of former Section 701 to Section 690 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see register 55, No. 17.

§ 691. Joint Applications.

(a) Two or more persons proposing to share in the use of water stored in a reservoir or proposing a common place of use (such as the irrigation of jointly owned property), shall file a joint application.

(b) A joint application shall clearly indicate the nature and extent of the respective rights of each applicant in the ownership and operation of the proposed reservoir and to any water right received. Joint applicants shall designate one person to receive correspondence from the board and to act for them in all matters pertaining to the usual processing of the application.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTION 1252, 1260 AND 1775, WATER CODE.

HISTORY

1. Renumbering and amendment of former Section 702 to Section 691 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Registers 74, No. 48 and 55, No. 17.

§ 692. Definitions.

NOTE: SPECIFIC AUTHORITY CITED: SECTIONS 1058 AND 13991(G), WATER CODE. SPECIFIC REFERENCE CITED: PART 2, DIVISION 2, CHAPTERS 3-5, 8 AND 14, DIVISION 7, WATER CODE; AND DIVISIONS 1-2, TITLE 7, GOVERNMENT CODE.

HISTORY

1. *Renumbering of former Sections 685, 686, 687 and 688 to 692, 693, 694 and 695, respectively, and amendments of 694 and 695 filed 12-1-55; effective thirtieth day thereafter (Register 55, No. 17).*
2. *Amendment filed 3-10-60; effective thirtieth day thereafter (Register 60, No. 5).*
3. *Amendment filed 9-3-76; effective thirtieth day thereafter (Register 76, No. 36).*
4. *Amendment of Article title and Section 692 filed 8-1-78; effective thirtieth day thereafter (Register 78, No. 31).*
5. *Renumbering and amendment of Section 692 to Section 656 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).*

§ 692.3. Determination of Completeness.

NOTE: SPECIFIC AUTHORITY CITED: SECTIONS 1058 AND 13991(G), WATER CODE. SPECIFIC REFERENCE CITED: PART 2, DIVISION 2, CHAPTERS 3-5, 8 AND 14, DIVISION 7, WATER CODE; AND DIVISIONS 1-2, TITLE 7, GOVERNMENT CODE.

HISTORY

1. *New section filed 8-1-78; effective thirtieth day thereafter (Register 78, No. 31).*
2. *Renumbering and amendment of Section 692.3 to Section 678 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).*

§ 692.5. Additional Information.

NOTE: SPECIFIC AUTHORITY CITED: SECTIONS 1058 AND 13991(G), WATER CODE. SPECIFIC REFERENCE CITED: PART 2, DIVISION 2, CHAPTERS 3-5, 8 AND 14, DIVISION 7, WATER CODE; AND DIVISIONS 1-2, TITLE 7, GOVERNMENT CODE.

HISTORY

1. *New section filed 8-1-78; effective thirtieth day thereafter (Register 78, No. 31).*
2. *Renumbering and amendment of Section 692.5 to Section 682 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).*

§ 692.7. Supplemental Information.

NOTE: SPECIFIC AUTHORITY CITED: SECTIONS 1058 AND 13991(G), WATER CODE. SPECIFIC REFERENCE CITED: PART 2, DIVISION 2, CHAPTERS 3-5, 8 AND 14, DIVISION 7, WATER CODE; AND DIVISIONS 1-2, TITLE 7, GOVERNMENT CODE.

HISTORY

1. *New section filed 8-1-78; effective thirtieth day thereafter (Register 78, No. 31).*
2. *Renumbering and amendment of Section 692.7 to Section 683 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).*

§ 693. Statement of Reasons and Request for Time to Complete.

History

1. Repealer filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

§ 694. Time to Complete and Extensions Thereof.

History

1. Amendment filed 3-10-60; effective thirtieth day thereafter (Register 60, No. 5).
2. Renumbering and amendment of Section 694 to Section 681 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

Article 5. Amounts for Which to Apply

§ 695. Unappropriated Water.

A permit can be issued only for unappropriated water. Unappropriated water does not include water being used pursuant to an existing right, whether the right is owned by the applicant, or by another person. (For the relationship between new applications and existing rights, see Section 731.)

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: SECTIONS 1202 AND 1375, WATER CODE.

History

1. Amendment filed 3-10-60; effective thirtieth day thereafter (Register 60, No. 5).
2. Renumbering and amendment of former Section 695 to Section 679, and renumbering and amendment of Section 653(a) to Section 695 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Registers 81, No. 11 and 73, No. 12.

§ 696. Applications Reasonably Necessary for Beneficial Use -How Stated.

The amount of water for which to apply is governed by the estimated amount which can be put to beneficial use including reasonable conveyance losses, and shall be stated in the definite terms of some established unit of measurement, such as cubic feet per second, gallons per minute or per day, or acre-feet per annum.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: SECTIONS 275, 1240, 1241, 1252 AND 1260, WATER CODE.

History

1. New section filed 3-10-0; effective thirtieth day thereafter (Register 60, No. 5).
2. Editorial correction (Register 60, No. 8).
3. Amendment filed 3-19-64; effective thirtieth day thereafter (Register 64, No. 6).
4. Renumbering and amendment of former Section 696 to Section 680, and renumbering and amendment of Section 655 to Section 696 filed 1 -16-87; effective thirtieth day thereafter (Register 87, No. 10).

§ 697. Examples of Amounts Considered Reasonably Necessary.

The amount of water considered reasonably necessary for certain uses when the appropriation will be by direct diversion shall be determined in the following manner:

(a) Irrigation Use.

(1) In most portions of the central valley of California and elsewhere in the State where similar conditions prevail a duty of one cubic foot per second continuous flow to each 80 acres shall be considered a reasonable headgate duty for most crops. Where there is a greater abundance of water and a heavy transportation loss, or the land to be irrigated is of a porous, sandy or gavelly character a continuous flow allowance of one cubic foot per second to each 50 acres may be considered reasonable. Under other conditions where water supply is less abundant and conditions are favorable to a more economical use a duty of one cubic foot per second to 150 acres may be considered reasonable for most crops. For the irrigation of rice the customary allowance shall be one cubic foot per second continuous flow to each 40 acres of irrigated land.

(2) The equivalent of these continuous flow allowances for any 30 -day period may be diverted in a lesser time at a greater rate so long as there is no interference with other users, and a clause allowing such rotation will be included in a permit issued for irrigation purposes.

(b) Domestic Use. Allowances for domestic use are variable, depending upon the character of the place of use, method of use, character of use and availability of water. The quantities considered reasonable for the respective domestic uses are as follows:

Homes, Resorts, Motels, Organization Camps, etc

Fully plumbed ..... 55 to 75 gallons per day per person
Sink and flush toilet only ..... 40 gallons per day per person
Sink and shower only..... 35 gallons per day per person
Sink only ..... 25 gallons per day per person
Outside supply only ..... 15 gallons per day per person
Cafe, fountain, etc ..... 2.5 gallons per day per person

Camp Grounds

Depending upon facilities provided, allowances range from 5 gallons per day per person, where faucets only are provided, to 30 gallons per day per person where washbowls, showers, flush toilets and laundry trays are provided.

Lawn, Garden, Orchard and Grounds

Irrigation..... 8.5 gallons per day per 100 square feet
Sprinkling to allay dust. ...7.5 to 10 gallons per day per 100 square feet

Livestock

Milch cows ..... 30 gallons per day per head
Horses..... 15 gallons per day per head
Goats and hogs ..... 2.5 gallons per day per head

Poultry, rabbits, etc .....0.25 gallon per day per head

(c) Stockwatering Use. For use for watering commercial livestock, the quantities considered reasonable are as follows:

Livestock

Range cattle and horses ..... 15 gallons per day per head
Hogs and goats..... 2.5 gallons per day per head
Sheep..... 1.5 gallons per day per head
Milch cows ..... 30 gallons per day per head
Hosing out dairy barn ..... 35 gallons per day per head

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: SECTION 275, 1240 AND 1252, WATER CODE.

HISTORY

1. *Renumbering and amendment of Section 657 to Section 697 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Registers 64, No. 6 and 55, No. 17.*
2. *Editorial correction amending subsection (a)(2) (Register 2005, No. 17).*

§ 698. Action upon an Application for an Excessive Amount.

An application for an amount of water clearly in excess of the capacity of the proposed diversion works or in excess of an amount reasonably necessary for the proposed use will not be approved and shall be reduced.

In the event of uncertainty, a showing of need for and ability to divert additional water will be required of the applicant.

NOTE: AUTHORITY CITED: SECTIONS 1058, WATER CODE.
REFERENCE: SECTION 2, ARTICLE X, CALIFORNIA CONSTITUTION; AND SECTION 275, WATER CODE.

HISTORY

1. *Renumbering and amendment of former Section 695 and amendment to Section 695 filed 12-1-55; effective thirtieth day thereafter. Former Section 696 repealer filed 12-1-55; effective thirtieth day thereafter (Register 55, No. 17).*
2. *Amendment filed 3-10-60; effective thirtieth day thereafter (Register 60, No. 5).*
3. *Amendment filed 11-25-80; effective thirtieth day thereafter (Register 80, No. 48).*
4. *Renumbering and amendment of former Section 698 to Section 686, and renumbering and amendment of Section 656 to Section 698 filed 1 -16-87; effective thirtieth day thereafter (Register 87, No. 10).*
5. *Editorial correction amending section (Register 2005, No. 17).*

§ 698.5. Separate Application for Frost Protection.

NOTE: AUTHORITY CITED: SECTIONS 185 AND 1058, WATER CODE.
REFERENCE: SECTION 1253, WATER CODE.

HISTORY

1. *New section filed 10-12-79; effective thirtieth day thereafter (Register 79, No. 41).*
2. *Renumbering and amendment of Section 698.5 to Section 689 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).*

§ 699. Limitation upon Application and Right Obtained.

Neither the amount of water applied for, not the season of diversion, as stated in the application as first filed can subsequently be increased in the application or in a permit or license issued on the application.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTION 1450, WATER CODE.

HISTORY

1. *New section filed 12-1-55; effective thirtieth day thereafter (Register 55, No. 17).*
2. *Amendment filed 3-19-64; effective thirtieth day thereafter (Register 64, No. 6).*
3. *Renumbering and amendment of former Section 699 to Section 687, and renumbering and amendment of Section 658 to Section 699 filed 1 -16-87; effective thirtieth day thereafter (Register 87, No. 10).*

§ 700. Approval of Applications for Partial Season of Use.

When unappropriated water is not available to the applicant during the entire season for which the use of water is needed, an application may be approved for the portion of the season during which unappropriated water is available, provided the applicant first supplies to the board reasonable assurance that water can and will be obtained from an alternate source during the remainder of the season without impairing the prior rights of others.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 1202, WATER CODE.

HISTORY

1. *Renumbering of former Section 756 and amendment filed 12-1-55; effective thirtieth day thereafter (Register 55, No. 17).*
2. *Renumbering and amendment of former Section 700 to Section 688, and renumbering and amendment of Section 760 to Section 700 filed 1 -16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 71, No. 48.*

§ 701. Application by an Agency Representing a Combined Use.

HISTORY

1. *Renumbering and amendment of former Section 697 and amendment to Section 701 filed 12-1-55; effective thirtieth day thereafter (Register 55, No. 17).*
2. *Renumbering and amendment of Section 701 to Section 690 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).*

§ 702. Joint Applications.

HISTORY

1. *Repealer and new section filed 12-1-55; effective thirtieth day thereafter (Register 55, No. 17).*
2. *Repealer and new section filed 11-24-71; effective thirtieth day thereafter (Register 71, No. 48).*
3. *Renumbering and amendment of Section 702 to Section 611 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).*

§ 703. Joint Ownership of Places of Use.

History

1. Renumbering of former Section 755 and amendment filed 12-1-55; effective thirtieth day thereafter (Register 55, No. 17).

2. Repealer filed 11-24-71; effective thirtieth day thereafter (Register 71, No. 48).

Article 6. Contents of Application and Instream Beneficial Use Assessment

§ 705. Form of Application.

An application for a permit to appropriate water shall be typewritten or legibly written in black ink, and filed in duplicate upon a printed form furnished by the board.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTION 1252, WATER CODE.

History

1. Renumbering and amendment of Section 650 to Section 705 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 74, No. 19.

§ 706. General Requirements.

(a) Applicants shall fill in each blank in the application. Supplements may be attached if there is insufficient space in the blanks of the printed form. If supplement is used it should be attached to the application and marked "Supplement." The data included should be segregated into paragraphs with numbers corresponding to the paragraph numbers and titles of the printed form and should be properly cross-referenced to the form. The application and supplement should include all data and information required to describe the proposed appropriation and use of water.

(b) The board may require the applicant to furnish a brief description of the project and its operation.

(c) General statements and data other than as indicated on the form are not desired as a part of the application but can be submitted in an accompanying letter which will be filed and made a part of the record.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTION 1252, WATER CODE.

History

1. Renumbering and amendment of Section 669 to Section 706 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

§ 707. Legal Nature, Name and Address of Applicant.

If the applicant is other than a natural person, its legal nature shall be given (corporation, partnership, or other entity.) If the application is made by two or more persons, the name of each shall be given, and the address shall be

supplied to which notices and other correspondence concerning any matter relating to the application may be mailed. Thereafter, notice mailed to that address will be considered notice to all.

NOTE: AUTHORITY CITED: SECTION 11058, WATER CODE.

REFERENCE: SECTIONS 1252 AND 122.5, WATER CODE.

HISTORY

1. Repealer of former Section 707, and renumbering and amendment of Section 669.5 to Section 707 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history; see Register 64, No. 6.

§ 708. Supplement to Application May Be Required.

When directed by the board, the applicant shall supplement the application with a statement showing the maximum quantity of water, in acre-feet or other unit of measurement prescribed by the board, that will be beneficially used each month during the proposed season of use.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 275, 1240, 1252 AND 1253, WATER CODE.

HISTORY

1. Renumbering and amendment of Section 670.5 to Section 708 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 64, No. 6.

§ 709. Instream Beneficial Use Assessment.

(a) The instream beneficial use assessment required by Water Code Section 1250.5 shall provide information including but not limited to:

(1) design, construction and operation of the project;

(2) in the area affected by the project: identification, and quantification, to the extent possible, of fish, wildlife and botanical resources; aquatic, riparian and terrestrial habitats; hydrology, including water quality and quantity relationships; geologic and soil resources; recreational demand; cultural resources; aesthetic values; specially designated or protected species, habitats, areas, or stream sections; and landuse plans;

(3) the applicant's preliminary findings on the flow regime necessary to protect existing resources and beneficial use levels, and assumptions and methodologies used to make this determination;

(4) the applicant's assessment of the effect of the proposed project on existing resources and current beneficial use levels, and assumptions and methodologies used to make this determination.

(b) The board shall develop a mailing list in connection with such applications and make it available to the applicant within 30 days after the application is accepted and given a priority of right (as defined in Water Code Section 1450) so that applicants may contact the parties on the board's mailing list prior to beginning work on the instream beneficial use assessment to obtain

their opinion as to the appropriate scope and content of the instream beneficial use assessment.

(c) Applicants for water rights for small hydroelectric projects who are required by Water Code Section 1250.5 to do an instream beneficial use assessment must complete the Instream Beneficial Use Assessment Form. The entire Instream Beneficial Use Assessment Form for Small Hydroelectric Facilities, adopted by the board in June 1983 is incorporated by reference in this section. It may be obtained from the Division of Water Rights of the board.

(1) The applicant should determine the depth of analysis required to complete the "Instream Beneficial Use Assessment Form" after an initial investigation that includes consultation with the appropriate local, state and federal agencies and other interested parties and organizations, which are identified on the board's mailing list. The applicant may also know other interested or potentially affected parties, who should be consulted.

(2) Following consultation with resources management agencies and other interested parties, the applicant should develop a written copy of work for completion of the "Instream Beneficial Use Assessment Form." The written scope of work must be submitted to the Division of Water Rights for staff review. Based upon the staff review, the Division may agree that the applicant should proceed with the instream beneficial use assessment, or alternatively, the Division may schedule a meeting or scoping session to enable the applicant, the responsible resource agencies and other interested and concerned parties to discuss information needs and make recommendations for a revised scope of work acceptable to the Division.

(3) The following definitions are applicable to the Instream Beneficial Use Assessment Form:

(A) "Bedload" refers to the particles in a stream channel that mainly move by jumping, sliding or rolling on or near the bottom of the stream.

(B) "Bank-full capacity" refers to the rate of water flow that completely fills a channel; i.e., the rate at which the water surface is level with the flood plain. The bank-full state is the most effective or dominate channel-forming flow.

(C) "Change in streamflow regime" see (CC) "Streamflow Regime, Change In," below.

(D) "Critical area" refers to the terrestrial or riparian area on either side of the critical reach that is influenced by the amount of streamflow.

(E) "Critical reach" refers to that section of the stream extending either from the point of diversion or, if the project includes an impoundment, the most upstream point of the impoundment to the point of return.

(F) "Critical riparian/wetland area" is the area on either side of the water course that is influenced by the amount of streamflow, and extends from the point of diversion or uppermost point of the impoundment, whichever is the highest upstream point, to the point of return. This area also includes stream

influenced wetlands, including but not limited to wet meadows, marshes, swamps and overflow areas.

(G) “Deposition” refers to the laying down of material by erosion or transport by water.

(H) “Ecosystem” refers to a complex system composed of a community of fauna and flora taking into account the chemical and physical environment with which the system is interrelated.

(I) “Erosion” refers to a group of processes whereby earth or rock material is worn away, loosened or dissolved and removed from any part of the earth’s surface. It includes the process of weathering, solution, corrosion and transportation.

(J) “Flood frequency curve” refers to a curve that plots over time the probability that floods of given magnitudes will recur.

(K) “Full length of the stream,” as used in the “Instream Beneficial Use Assessment Form,” will vary with individual site settings and will be determined on a case-by-case basis.

(L) “Groundwater recharge” refers to the addition to the water within the earth that occurs naturally from infiltration of rainfall and from water flowing over the earth materials that allow water to infiltrate below the land surface.

(M) “Habitat” or “primary habitat” refers to the place where an organism lives.

(N) “Habitat, migration” refers to that area which individuals periodically visit or through which individuals periodically pass on their way to another destination.

(O) “Habitat type” refers to a naturally occurring assemblage of plants. (For example: aspen, grove, white alder/willow forest, willow thicket, meadow.)

(P) “International whitewater scale” refers to a scale developed by the American Whitewater affiliation which is used to rate the boating difficulty of a river. Sections of a river are rated on a scale of I to VI, with VI being the most difficult.

(Q) “International scale of river difficulty”: (If rapids on a river generally fit into one of the following classifications, but if the water temperature is below 50 degrees Fahrenheit, or if the trip is an extended trip in a wilderness area, the river should be considered one class more difficult than normal.)

CLASS I. Moving water with a few riffles and small waves. Few or no obstructions.

CLASS II. Easy rapids with waves up to 3 feet, and wide, clear channels that are obvious without scouting. Some maneuvering is required.

CLASS III. Rapids with high, irregular waves often capable of swamping an open canoe. Narrow passages that often require complex maneuvering. May require scouting from shore.

CLASS IV. Long, difficult rapids with constricted passages that often require precise maneuvering in very turbulent waters. Scouting from shore is often necessary, and conditions make rescue difficult. Generally not possible for open canoes. Boaters in covered canoes and kayaks should be able to Eskimo roll.

CLASS V. Extremely difficult, long, and very violent rapids with highly congested routes which nearly always must be scouted from shore. Rescue conditions are difficult and there is significant hazard to life in event of mishap. Ability to Eskimo roll is essential for kayaks and canoes.

CLASS VI. Difficulties of Class V carried to the extreme of navigability. Nearly impossible and very dangerous. For teams of experts only, after close study and with all precautions taken.

(R) “Key species” refers to the species of concern in any given circumstances.

(S) “Landslides” refers to the failure of a slope in which the movement of the soil mass takes place along an interior surface of sliding.

(T) “Mudflows” refers to a moving mass of almost liquid material or wet earth caused by rain.

(U) “Nutrient transfer” refers to the transfer of nutrients from land to water through leaching and from water to land in times of floods.

(V) “Primary habitat” refers to the primary place where an organism lives.

(W) “Productivity” refers to the amount of living matter actually produced by the unit being discussed.

(X) “Change in streamflow regime” see (CC) “Streamflow Regime, Change In,” below.

(Y) “Riparian vegetation” refers to moisture-loving vegetation along a watercourse which is distinguished from other vegetation by its dependence on the combination of soil moisture and other environmental factors provided by a permanent or intermittent stream.

(Z) “Sediment transfer” refers to the quantity of sediment measured in dry weight or by volume, transported through a stream cross section in a given time. Consists of both suspended load and bedload.

(AA) “Slope stability” refers to an evaluation (almost always qualitative and expressed as a probability) of the tendency for the materials on or constituting a slope (e.g., rocks, soil, snow) to either remain in place or to move downhill.

(BB) “Spoils” refers to loose rock, solid and vegetation debris, left from construction activities.

(CC) “Streamflow regime, cange in” refers to the criteria which shall be considered in determining whether or not the project will change the streamflow regime, including but not limited to, the following:

1. Will the rate and volume of flow be changed?

2. Will the water temperature be changed?

3. Will there be changes in the concentration of dissolved oxygen?

4. Will there be changes in the timing of water releases from any existing water diversion or storage facility?

(DD) "Structural characteristics" refers to the physical or life -form characteristics of the habitat type described in terms of the vertical pattern, including but not limited to overstory, understory or seedling tree, tall or low shrub, perennial or annual herb, and moss or lichen, and the horizontal pattern described in terms of age-class.

(EE) "Suspended solids" refers to the small, solid particles in water that cause a cloudy condition. Particles of suspended sediment tend to settle at the channel bottom (settleable solids), but upward currents in turbulent flow counteract gravitational settling.

(FF) "Substrate" refers to the base on which an organism lives.

(GG) "Tailrace" refers to the channel, downstream of the draft tube, that carries the water discharged from the turbine. The draft tube is the discharge section of the turbine.

(HH) "Turbidity" refers to a measure of the extent to which light passing through water is reduced due to suspended materials. Excessive turbidity may interfere with light penetration and minimize photosynthesis, thereby causing a decrease in primary productivity. It may interfere directly with essential physiological functions of fish and other aquatic organisms, making it difficult for fish to locate a good food source, and altering water temperature.

(d) An instream beneficial use assessment shall be considered adequate when the Division of Water Rights has certified in writing, that:

(1) The applicant has filed with the Division of Water Rights 10 copies of the "Instream Beneficial Use Assessment Form," legibly typed, properly executed, and has fully and adequately provided the information required in the form as determined by the Division of Water Rights.

(2) Within 10 days of the date the form is submitted to the board (1) the Division of Water Rights shall make copies available to resource management agencies, and (2) interested parties shall be notified of the availability of copies for examination at locations open to the public. This will include, at a minimum, two locations in the general area of the project, the Resources Agency Library, and Division of Water Rights headquarters. Copies also may be purchased from the Division at the cost of reproduction.

(3) The applicant has filed final and complete maps as required by the "Instream Beneficial Use Assessment Form," as determined by the Division of Water Rights.

(e) Upon receipt of an instream beneficial use assessment, the division shall, within 90 calendar days, determine whether the assessment is adequate, taking into account the written scope of work, the discussion at the scoping session, if one is held, comments from other agencies and interested parties, and whether the assessment has met procedural requirements. Board approval of the

adequacy of the assessment does not constitute endorsement of the assessment's preliminary findings on streamflow regime. (f) When the division determines that an instream beneficial use assessment is adequate, it shall inform the applicant, in writing, of such determination.

(g) If the division determines that an instream beneficial use assessment is inadequate, it shall, in writing, inform the applicant of that determination, shall specify those parts of the assessment that are inadequate, and shall indicate the manner in which they can be made adequate.

(h) To harmonize the provisions of Water Code Section 1250.5 with Article 5 of the Permit Streamlining Act (beginning with Government Code Section 65950) and the California Environmental Quality Act (beginning with Section 21000 of the Public Resources Code.):

(1) When an instream beneficial use assessment is required because a proposed project would change the streamflow regime, the one (or two) year time period within which the board must act pursuant to Water Code Section 1250.5 shall begin when a complete application has been filed and the Division of Water Rights has determined that the instream beneficial use assessment is adequate.

(i) An instream beneficial use assessment form shall not be accepted for filing unless it is filed concurrently with or after the application for the water right permit for the project.

(j) If there is a disagreement regarding any of the following which cannot be resolved at the division level:

(1) whether the streamflow regime will be changed and, therefore an instream beneficial use assessment required;

(2) the scope or content of the instream beneficial use assessment required from the applicant;

(3) the adequacy of an instream beneficial use assessment submitted by an applicant; then, within 30 days from the date of the staff determination any person may petition the board in writing to resolve the matter. Within 30 days following receipt of the petition, the Division of Water Rights shall schedule the matter for a workshop for a determination by the board. The board may either resolve the issue at the workshop or schedule a hearing on the matter.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 106.7 AND 1250.5, WATER CODE; AND SECTION 21069, PUBLIC RESOURCES CODE.

HISTORY

1. *Renumbering and amendment of Section 670.6 to Section 709 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 83, No. 32.*
2. *Editorial correction amending subsections (c)(2), (c)(3)(N), (c)(3)(W), (c)(3)(Z), (d)(1), (d)(2) and (h)(1) (Register 2005, No. 17).*

§ 710. Signature of Applicant.

The application and all other writings shall be signed by the applicant or an authorized agent. The board shall presume that any person, other than an applicant, who signs an application or other writing is an authorized agent. The presumption shall be overcome if the board may be charged with actual knowledge that the person signing has no authority to do so.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTION 1252 AND 1260, WATER CODE.

HISTORY

1. Renumbering and amendment of Section 671 to Section 710 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 79, No. 20.

§ 711. Documents That Must Be Sworn To.

Applications and accompanying statements, including information required by Section 731, reports required of permittees and licensees and petitions for extension of time and for changes, shall be certified as true under penalty of perjury in accordance with Section 2015.5 of the Code of Civil Procedure.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTION 1051, 1075, 1080, 1100, 1105 AND 1252, WATER CODE.

HISTORY

1. Renumbering and amendment of Section 654 to Section 711 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 73, No. 41.

§ 712. Issuance of Notice by Board.

HISTORY

1. Amendment filed 3-10-60; effective thirtieth day thereafter (Register 60, No. 5).
2. New subsection (b) filed 3-7-73; effective thirtieth day thereafter (Register 73, No. 10).
3. Renumbering and amendment of Section 712 to Section 684 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

§ 713. Effect of Issuance of Notice.

HISTORY

1. New section filed 3-10-60; effective thirtieth day thereafter (Register 60, No. 5).
2. Renumbering and amendment of Section 713 to Section 685 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

§ 714. Application for Permit to Appropriate Water from Wild and Scenic Rivers.

HISTORY

1. New section filed 5-11-73; effective thirtieth day thereafter (Register 73, No. 19). For history of former section, see Register 64, No. 6.

2. Repealer filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

Article 7. Map Requirements

§ 715. General Requirements.

(a) A general project map and one copy of suitable scale on a sheet not larger than 28 inches by 40 inches or smaller than 8-1/2 inches by 11 inches shall be filed in connection with each application. This map shall be neatly and accurately drawn and should show the source from which water is to be taken, all dams, main conduits, reservoirs and other facilities, the important streams and tributaries in the area, the place of use, and any other features necessary for ready identification and understanding of the project.

(b) The map shall show the lines of the public land survey by 40 -acre subdivision, section and township if the area is sectionalized. If the area is not sectionized the nearest lines of the public land survey to or across the project area should be extended as if it were surveyed. The lines of any other recorded survey may be used to describe the project, provided, the relation to the lines of the nearest adjacent public land survey is shown.

(c) Points of original diversion, and of rediversion from any natural stream, must be shown either by (1) bearing and distance or co-ordinate distances from some corner of a recorded survey if such a corner exists within a distance of two miles; (2) bearing and distance or co-ordinate distances from some permanent monument or a natural object which can be readily found and recognized, such as the confluence of two known streams; or (3) co-ordinates and zone of the California Co-ordinate System.

(d) The place of use shall be identified by reference to 40-acre subdivision, section, township, range and meridian of the public land survey or projection thereof, or by reference to the smallest subdivision of some other recorded survey if more commonly used within the project area except as otherwise provided in Section 719. If described by reference to some other recorded survey, the lines of the public land survey, or projection thereof, should be shown. The 40-acre subdivisions of the public land survey will be assumed regular unless it be shown otherwise.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 1252, 1260 AND 1261, WATER CODE.

HISTORY

1. Renumbering and amendment of former Section 715, and renumbering and amendment of Section 673 to Section 715 filed 1-16 -87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Registers 73, No. 19 and 60, No. 5.

2. Editorial correction amending subsection (c) (Register 2005, No. 17).

§ 716. Maps for Minor Projects.

For minor projects smaller than those specified in Section 717, the board will provide blank township plats upon which the maps may be submitted or the required information may be submitted on U.S.G.S. quadrangle or topographic maps.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: SECTIONS 1252, 1260 AND 1261, WATER CODE.

HISTORY

1. Repealer of former Section 716, and renumbering and amendment of Section 679 to Section 716 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 73, No. 19 and 67, No. 49.

§ 717. Maps for Larger Projects.

The following additional maps are required for (1) appropriating more than three cubic feet per second, or (2) constructing a dam which will be under the jurisdiction of the Department of Water Resources for safety, as defined in Sections 6002 and 6003 of the Water Code, or (3) creating a reservoir with a surface area in excess of ten acres, or (4) appropriating more than 1,000 acre-feet per annum by underground storage. (For good cause, the Chief, Division of Water Rights may waive the following requirements for projects defined in (3) above.)

(a) Maps shall be submitted which were prepared by a civil engineer or land surveyor registered or licensed in the State of California.

(b) An original map and one copy are required. The original shall be accurately and permanently rendered to a suitable scale on linen, mylar or equivalent material; the other may be a print thereof.

(c) All maps shall be titled, show the meridian and scale and bear the California certificate and registration number of the engineer or surveyor. The certificate shall: state the name and address of the person making the certificate and whether the map was prepared by him or under his supervision; indicate the source of the information shown thereon, including the dates of actual surveys if such were made; certify that it correctly represents the works described in the accompanying application, the location of streams and ditches in the immediate vicinity, and the acreage to be irrigated; be concluded by the date, signature, and California certificate number of the engineer or surveyor. The following example is a typical certificate:

CERTIFICATE OF ENGINEER (SURVEYOR)

I, John Doe, of 100 Main Street, Sacramento, California, do hereby certify that this map was prepared by me from notes taken during an actual survey made by me (or under my immediate supervision) on _____, 20___, (and/or from U.S. Geological Survey 7.5-minute Lincoln and Roseville Topographic quadrangles,) and that it

correctly represents the project described in the accompanying application and shows the location of streams and ditches in the immediate vicinity.

/s/ John Doe _____

_____

(date)

California Civil Engineer (Surveyor) Certificate No._____

(d) Contour maps of surface reservoirs shall be submitted with contour intervals not greater than:

Height of dam	Maximum contour interval
300 feet or over	40 feet
100 feet or over, but less than 300 feet	20 feet
30 feet or over, but less than 100 feet	10 feet
Less than 30 feet	5 feet

For dams less than five feet high, the high water contour shall be shown and the elevation of the maximum and minimum water surfaces shall be stated.

(e) All contour maps shall show the high water line and state the elevation thereof, and include an area-capacity curve or table.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 1252, 1260 AND 1261, WATER CODE.

HISTORY

1. *Repealer of former Section 717, and renumbering and amendment of Section 680 to 717 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Registers 80, No. 48 and 73, No. 19.*
2. *Change without regulatory effect amending subsection (c) filed 9-25-2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 39).*

§ 718. Requirements for Municipal Purposes.

Maps accompanying applications for municipal purposes shall show the location of the place of use by outer boundaries. Sections and townships of the public land survey or projections shall be superimposed upon the map.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 1252, 1260 AND 1261, WATER CODE.

HISTORY

1. *Renumbering and amendment of Section 677 to Section 718 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 55, No. 17.*

§ 719. Requirements for Irrigation Purposes.

Where irrigation is proposed by a public district organized under statute, a public utility, or a mutual water company, the exterior boundaries of the general service area may be shown in lieu of compliance with the provisions of Section 715(d). Where irrigation of very large areas is proposed, the board may, in its discretion, waive compliance with the provisions of Section 715(d) and accept as

sufficient an identification of the exterior boundaries of the general area to be irrigated.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: SECTIONS 1252, 1260 AND 1261, WATER CODE.

HISTORY

1. *Amendment filed 12-1-55; effective thirtieth day thereafter (Register 55, No. 17).*
2. *Amendment filed 3-10-60; effective thirtieth day thereafter (Register 60, No. 5).*
3. *Editorial correction (Register 60, No. 8).*
4. *Amendment of subsection (e) filed 5-9-74; effective thirtieth day thereafter (Register 74, No. 19).*
5. *Renumbering and amendment of former Section 719 to Section 745, and renumbering and amendment of former Section 674 to Section 719 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).*

§ 719.5. Claim of Right Without Compliance with Statutory Procedure.

HISTORY

1. *New section filed 12-1-55; effective thirtieth day thereafter (Register 55, No. 17).*
2. *Renumbering and amendment of former Section 719.5 to Section 746, filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).*

§ 720. Requirements for Power Purposes.

(a) Maps accompanying applications for power purposes shall show the point of diversion, the conduit, penstock and power house and, the point at which the water is returned to the stream.

(b) Applicants applying for more than 3 cubic feet per second direct diversion or 200 acre-feet per annum, shall submit a profile of the penstock on which appears in figures, the elevation of the nozzle if an impulse wheel is to be used, or the elevation of the water surface at the draft tube if a reaction wheel is to be used, and the elevation of the first free water surface above the penstock. The difference between these two elevations must equal the total fall to be utilized.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: SECTIONS 1252, 1260, 1261 AND 1531, WATER CODE.

HISTORY

1. *Amendment filed 3-10-60; effective thirtieth day thereafter (Register 60, No. 5).*
2. *Renumbering and amendment of former Section 720 to Section 747 and 753, and renumbering and amendment of Section 675 to Section 720 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 78, No. 9.*

§ 721. Requirements for Mining Purposes.

Maps accompanying applications for mining purposes shall show the location of the claims and of the mill if water is to be used in a mill. If water is returned to the stream, the point of return shall be shown.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 1252, 1260 AND 1261, WATER CODE.

HISTORY

1. Renumbering and amendment of former Section 721 to Section 748, and renumbering and amendment of Section 676 to Section 721 filed 1 -16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Registers 79, No.2 and 76, No. 36.

§ 722. Maps for Underground Storage.

Maps accompanying applications for underground storage shall show the location of points of diversion or rediversion to underground storage, the conduit system, the areas, estimated capacities and locations of spreading grounds, the areas, capacities, and locations of underground reservoirs, and the places of measurement of water diverted to underground storage, and the place of use.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: SECTIONS 1252, 1260 AND 1261, WATER CODE.

HISTORY

1. Amendment filed 12-1-55; effective thirtieth day thereafter (Register 55, No. 17).
2. Amendment filed 3-10-60; effective thirtieth day thereafter (Register 60, No. 5).
3. Renumbering and amendment of former Section 722 to Section 749, and renumbering and amendment of Section 689 to Section 722 filed 1 -16-87; effective thirtieth day thereafter (Register 87, No. 10).

§ 722.5. Abandonment of Protest.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: PART 2, DIVISION 2, WATER CODE.

HISTORY

1. New section filed 9-3-76, effective thirtieth day thereafter (Register 76, No. 36).
2. Renumbering and amendment of former Section 722.5 to Section 750 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

§ 723. Requirements for Other Purposes.

(a) Maps for applications for industrial purposes outside of a municipality or for domestic, recreational, stockwatering, or other purposes not named herein, shall show the location of the place of use by sections, township and range of the public land survey and the 40-acre subdivision thereof.

(b) Maps accompanying applications for domestic use within subdivisions, forest service tracts, etc., shall show the place of use by tract name or number and lot numbers as well as by 40-acre subdivision, section, township, and range.

(c) If the place of use is in an area not covered by a public land survey, the nearest lines of the public land survey should be extended and shown on the map.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: SECTIONS 1252, 1260 AND 1261, WATER CODE.

History

1. *Amendment filed 3-10-60; effective thirtieth day thereafter (Register 60, No. 5)*
2. *Renumbering and amendment of former Section 723 to Section 751, and renumbering and amendment of Section 678 to Section 723 filed 1 -16-87; effective thirtieth day thereafter (Register 87, No. 10).*
3. *Editorial correction amending subsection (b) (Register 2005, No. 17).*

§ 724. Filing and Application Without Maps -When Allowed.

For preliminary purposes, the application may be filed without maps or with such maps as are within the present ability of applicant to supply.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: SECTIONS 1052, 1260 AND 1261, WATER CODE.

History

1. *Amendment filed 3-19-64; effective thirtieth day thereafter (Register 64, No. 6).*
2. *Renumbering and amendment of former Section 724 to Section 752, and renumbering and amendment of Section 681 to Section 724 filed 1 -16-87; effective thirtieth day thereafter (Register 87, No. 10).*

§ 725. Deferral of CEQA Documents.

NOTE: SPECIFIC AUTHORITY CITED: SECTIONS 1058 AND 13991(G), WATER CODE. SPECIFIC REFERENCE CITED: PART 2, DIVISION 2, CHAPTERS 3-5, 8 AND 14, DIVISION 7, WATER CODE; AND DIVISIONS 1-2, TITLE 7, GOVERNMENT CODE.

History

1. *New section filed 8-1-78; effective thirtieth day thereafter (Register 78, No. 31).*
2. *Repealer filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).*

§ 728. Board May Conduct -Co-Operation by Parties.

History

1. *Amendment filed 12-1-55; effective thirtieth day thereafter (Register 55, No. 17).*
2. *Amendment filed 3-10-60; effective thirtieth day thereafter (Register 60, No. 5).*
3. *Renumbering and amendment of Section 728 to Section 755 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).*

§ 729. Benefits and Detriments; Alternative Projects.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: CHAPTER 6, PART 2, DIVISION 2, WATER CODE.

History

1. *New section filed 3-27-75; effective thirtieth day thereafter (Register 75, No. 13).*
2. *Renumbering and amendment of Section 729 to Section 756 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).*

Article 8. Special Situation Applications

§ 730. Adding Power Plants to Existing Works.

(a) Persons having a permit or license for the use of water may petition the board to add power use to the permit or license as a beneficial use when the

use of water for power can be accomplished with no change in the streamflow regime.

See Section 799 concerning petition for change to allow the addition of power plants to existing works.

(b) A new application must be filed when:

(1) Use of the water for power will change the stream flow regime; or

(2) The applicant does not have a permit, license or other legal right to the water to be appropriated; or

(3) The applicant has a permit or license, but additional water will be used above the maximum amount of water allowed under the existing permit or license.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 106.7, 110, 1200, 1250.5, 1252, 1490 AND 1491, WATER CODE.

HISTORY

1. New Section filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For history of former Section 730, see Register 60, No. 8.

§ 731. Applications for Water Where an Existing Right Is Claimed.

(a) A person who claims an existing right to the use of water shall be granted a permit or license to appropriate no more water than is needed over that which is available under the existing right to meet the beneficial use requirements of the project. In implementing this requirement, the board will accept an application for an amount of water equal to the total reasonable requirements of a project where the existing right asserted for a common place of use has not been adjudicated or otherwise finally determined. Any permit or license issued by the board pursuant to such an application shall contain a condition which will limit the quantity of water appropriated under the permit or license to the face value of the permit or license less any water available under an existing right subsequently determined to exist for the same place of use in any adjudication or other legally binding proceeding.

(b) Where an applicant claims an existing right to the use of water within the proposed place of use, the applicant shall describe the nature, amount, season, points of diversion and place of use of such claim together with the priority asserted. If the existing right is evidenced by a court decree or other legally binding document, the applicant shall submit a copy of such document unless the board already has a copy in its records.

(c) Any person who obtains a permit or license for a particular place of use and thereafter transfers an existing water right for the same place of use to another place of use without the prior approval of the board shall forfeit all rights under the permit or license.

(d) Any person who obtains a permit or license for a particular place of use without claiming an existing water right for the same place of use and who

thereafter exercises a claimed existing right for that place of use without the prior approval of the board shall forfeit all rights under the permit or license.

(e) Any permit or license issued to a person who claims an existing water right for the same place of use shall contain a term requiring the permittee or licensee to take and use water under the existing right only in accordance with law. The permittee or licensee will then be subject to enforcement action by the board for violation of this permit term if the permittee or licensee takes water for there is no entitlement under the existing right in combination with the permit or license.

(f) Any person who has previously obtained a permit or license containing a term obligating the permittee or licensee to waive an existing right for so long as the permit or license remains in effect may have this term deleted upon agreement to be subject to the provisions of subsections (a) through (e) of this section.

NOTE: AUTHORITY CITED: SECTIONS 185 AND 1058, WATER CODE.

REFERENCE: SECTION 2, ARTICLE X, CALIFORNIA CONSTITUTION; AND SECTIONS 100, 275, 1201, 1202, 1253, 1255, 1375, 1410, 1675 AND 1701, WATER CODE.

HISTORY

1. Amendment filed 3-10-60; effective thirtieth day thereafter (Register 60, No. 5).
2. Amendment filed 3-19-64; effective thirtieth day thereafter (Register 64, No. 6).
3. Renumbering and amendment of former Section 731 to Section 766, and renumbering and amendment of Section 653(b) to Section 731 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 81, No. 11.

§ 732. Relationship of Applicant and User.

(a) Filing for Service of a Subdivision. If the applicant is the owner of a subdivision and intends merely to construct and operate the diversion system pending the time that the purchasers of the lots can themselves take over and manage the diversion system, the conditions under which title to the water right shall pass to the purchasers must be clearly established.

(b) Establishment of Relationships. When the applicant will not use the water to be appropriated, but will distribute or supply it to others, the relationship between applicant and the water users must be clearly established.

(c) Jurisdiction of Public Utilities Commission. The board may require sufficient information to indicate whether a proposed distribution of water will be subject to the jurisdiction of the Public Utilities Commission.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 1253 AND 1375, WATER CODE.

HISTORY

1. Amendment filed 3-10-60; effective thirtieth day thereafter (Register 60, No. 5).
2. Amendment filed 12-15-72; effective thirtieth day thereafter (Register 72, No. 51).

3. Renumbering and amendment of former Section 732 to Section 763, and renumbering and amendment of Sections 754, 755 and 756 to Sections 732 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

4. Editorial correction amending subsection (a) (Register 2005, No. 17).

§ 733. Underground Storage.

Applications proposing underground storage shall include the following information upon a form that will be supplied by the board:

(a) The location of each point where it is proposed to divert or redivert water from a natural channel to spreading grounds away from the stream, or to take water under control for direct percolation into the stream channel. All locations shall be described in the manner detailed in Section 715(c).

(b) A description of the physical works used to divert and convey the water and to accomplish the underground storage, including the headworks, conduits and spreading grounds; the capacities of the conduits and spreading grounds; the underground reservoirs, including the projected surface areas and capacities thereof; and the method and points of measurement of the water diverted to and withdrawn from underground storage.

(c) In event an application proposes both surface diversion and underground storage, the appropriate paragraph of the regular form shall be completed regarding surface diversion and in addition the underground features shall be described in the special form as provided in this section.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 1252, 1260 AND 1261, WATER CODE.

HISTORY

1. Amendment of subsection (f) filed 5-11-73; effective thirtieth day thereafter (Register 73, No. 19). For prior history, see Register 71, No. 48.

2. Amendment of subsection (a) filed 3-3-78; effective thirtieth day thereafter (Register 78, No. 9).

3. Repealer of subsection (f) filed 7-6-79; effective thirtieth day thereafter (Register 80, No. 3).

4. Renumber of subsections (g), (h), (i), (j), and (k) to (f), (g), (h), (i), and (j) filed 1-16-80 as procedural and organizational, effective thirtieth day thereafter (Register 80, No. 3).

5. Renumbering and amendment of former Section 733 to Section 761, and renumbering and amendment of Section 688 to Section 733 filed 1 -16-87; effective thirtieth day thereafter (Register 87, No. 10).

§ 733.5. Witnesses and Exhibits.

NOTE: AUTHORITY CITED: SECTION 185 AND 1058, WATER CODE.

REFERENCE: SECTIONS 183 AND 1051, WATER CODE.

HISTORY

1. New section filed 7-6-79; effective thirtieth day thereafter (Register 79, No. 27).

2. Renumbering and amendment of Section 733.5 to Section 762 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

§ 734. Applications Within the California Wild and Scenic Rivers System.

(a) No application which proposes an appropriation of water in connection with construction of a dam, reservoir, or other water impoundment facility on any river designated in Public Resources Code Section 5093.54 will be accepted for filing.

(b) An application which proposes an appropriation of water which could affect any river designated in Public Resources Code Section 5093.54, will be accepted for filing. The Secretary of the Resources Agency will be provided special notice of any such application.

No permit shall be issued if the board finds that the appropriation would impair the extraordinary scenic, recreational, fishery, or wildlife values of any such designated river.

(c) An application which proposes an appropriation of water in connection with construction of a water diversion facility on any river designated in Public Resources Code Section 5093.54, other than a dam, reservoir, or other water impoundment facility, will be accepted for filing; provided, no permit shall be issued on any such application unless the Secretary of the Resources Agency first determines (1) that such facility is needed to supply domestic water to the residents of the county or counties through which the river flows, and (2) that such facility will not adversely affect its free-flowing condition or natural character. Such determination shall be in addition to other findings which the board is required by law to make.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 5093.55, 5093.56 AND 5093.61, PUBLIC RESOURCES CODE; AND SECTION 1252, WATER CODE.

HISTORY

1. New Section filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For history of former Section 734, see Registers 78, No. 9, 71 No. 43, and 60,No. 5.

2. Editorial correction of Note (Register 2002, No. 39).

§ 735. Napa River, Special.

(a) Budding grape vines and certain other crops in the Napa Valley may be severely damaged by spring frosts. During a frost, the high instantaneous demand for water for frost protection by numerous vineyardists and other water users frequently exceeds the supply in the Napa River stream system. This results in uncoordinated diversions and possible infringements upon other rights. Therefore, all diversions of water from the stream system between March 15 and May 15 determined to be significant by the board or a court of competent jurisdiction shall be considered unreasonably and a violation of Water Code Section 100 unless controlled by a watermaster administering a board or court approved distribution program. Diversions for frost protection and irrigation during this period shall be restricted to: (1) replenishment of

reservoirs filled prior to March 15 under an appropriative water right permit, or (2) diversions permitted by the court.

(b) The service area of the distribution program may be revised at any time by order of the board or the court. The board will retain jurisdiction to revise terms and conditions of all frost protection permits should future conditions warrant.

(c) Under this section diversion of water during the spring frost season from March 15 to May 15 to replenish water stored in reservoirs prior to the frost season is "regulation," as defined in Article 2, Section 657: Replenishment diversion must be to reservoirs for which a permit or license authorizing winter storage prior to the frost season has been issued.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTION 2, ARTICLE X, CALIFORNIA CONSTITUTION; AND SECTIONS 100, 275 AND 1051.5, WATER CODE.

HISTORY

1. Amendment filed 3-10-60; effective thirtieth day thereafter (Register 60, No. 5).
2. Amendment filed 7-6-79; effective thirtieth day thereafter (Register 79, No. 27).
3. Repealer of former Section 735, and renumbering and amendment of former Sections 659 and 660 to Section 735 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 79, No. 41.
4. Editorial correction amending subsection (a) (Register 2005, No. 17).

§ 736. Petitions for Assignment or Release from Priority of Applications Filed Pursuant to Part 2, of Division 6, Sections 10500 et seq. of the Water Code.

(a) Petitions for assignment or release from priority of an application filed pursuant to Section 10500 of the Water Code need not be in any particular form.

(b) Petitions for assignment must be submitted in duplicate and, if the application is not complete, must include a proposed completed application which complies with the requirements set forth in Articles 1 through 7 and Article 10 of this subchapter, to the extent each is applicable.

(c) A petition for assignment or release from priority will not be accepted for filing unless it is accompanied by the filing fee required by chapter 5 (commencing with section 1061) of this division.

(d) If the proposed completed application fails to conform with legal requirements, it will be returned to the petitioner with a statement of the defects.

NOTE: AUTHORITY CITED: SECTIONS 1058 AND 1530, WATER CODE.

REFERENCE: SECTIONS 1252, 1260, 1525, 19594 AND 10504.1, WATER CODE.

HISTORY

1. Amendment filed 3-10-60; effective thirtieth day thereafter (Register 60, No. 5).

2. Renumbering and amendment of former Section 736 to Section 765, and renumbering and amendment of Section 800 to Section 736 filed 1 -16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 78, No. 9.

3. Amendment of subsection (c) and Note filed 12-23-2003 as an emergency; operative 1-1-2004 (Register 2003, No. 52). Pursuant to Water Code section 1530 this rulemaking action remains in effect until revised by the State Water Resources Control Board.

§ 736.1. Hearings in Response to Drought Emergency Conditions.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: SECTION 275 AND DIVISION 2, WATER CODE.

HISTORY

1. New section filed 1-31-77 as an emergency; effective upon filing (Register 77, No. 6).

2. Certificate of Compliance filed 4-20-77 (Register 77, No. 17).

3. Renumbering and amendment of Section 736.1 to Section 767 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

§ 737. Time of Filing Petitions.

Two or more petitions for assignment or release from priority of the same application will be considered on their merits without regard to which was filed first.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: SECTION 10504.01, WATER CODE.

HISTORY

1. Amendment filed 12-1-55; effective thirtieth day thereafter (Register 55, No. 17).

2. Amendment filed 3-10-60; effective thirtieth day thereafter (Register 60, No. 5).

3. Renumbering and amendment of former Section 737 to Section 760, and renumbering and amendment of former Section 801 to Section 737 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 65, No. 20.

4. Editorial correction amending section (Register 2005, No. 17).

5. Change without regulatory effect amending section filed 4-6-2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 14).

§ 737.1. Reconsideration of Board Decisions and Orders.

HISTORY

1. Renumbering and amendment of Section 737.1 to Section 768 filed 1-16-87; effective thirtieth day thereafter (Register 87, N. 10). For prior history, see Register 75, No. 21.

§ 737.2. Petition for Reconsideration.

HISTORY

1. Renumbering and amendment of former Section 737.2 to Section 769 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 75, No. 21.

§ 737.4. Board Action.

History

1. Renumbering and amendment of Section 737.4 to Section 770 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 75, No. 21.

§ 737.5. Procedure Relating to Hearings.

History

1. Renumbering and amendment of Section 737.5 to Section 771 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 75, No. 21.

§ 738. Protests to Petitions.

Protests to either a petition for assignment or release from priority or to a proposed completed application must be submitted within the time stated in the notice issued by the board or such further time as may be allowed for cause by the board.

NOTE: ADDITIONAL AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: SECTION 10504.01, WATER CODE.

History

1. Amendment filed 12-1-55; effective thirtieth day thereafter (Register 55, No. 17).
2. Amendment filed 3-10-60; effective thirtieth day thereafter (Register 60, No. 5).
3. Renumbering and amendment of former Section 738 to Section 791, and renumbering and amendment of Section 802 to Section 738 filed 1 -16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 65, No. 20.

§ 738.5. Nature of Action.

History

1. New section filed 3-19-64; effective thirtieth day thereafter (Register 64, No. 6).
2. Renumbering and amendment of former Section 738.5 to Section 792 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

§ 739. Hearings of Petitions for Release from Priority.

Whenever practicable, the hearing of a petition for release from priority will be combined with the hearing of the application in favor of which the release is requested.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: SECTIONS 1252, 10504.01, 10504.02 AND 10504.1, WATER CODE.

History

1. New section filed 12-1-55; effective thirtieth day thereafter (Register 55, No. 17).
2. Renumbering from 738.5 and amendment filed 3-10-60; effective thirtieth day thereafter (Register 60, No. 5).
3. Amendment filed 3-19-64; effective thirtieth day thereafter (Register 64, No. 6).

4. Renumbering and amendment of former Section 739 to Section 793, and renumbering and amendment of Section 803 to Section 739 filed 1 -16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 65, No. 20.

§ 740. Maps and Data Required.

HISTORY

1. Amendment filed 12-1-55; effective thirtieth day thereafter (Register 55, No. 17).
2. Renumbering from 739 and amendment filed 3-10-60; effective thirtieth day thereafter (Register 60, No. 5).
3. Renumbering and amendment of Section 740 to Section 714 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

§ 741. Notice of Petition.

HISTORY

1. Renumbering from 740 and amendment filed 3-10-60; effective thirtieth day thereafter (Register 60, No. 5). For history of former Section 741, see Register 60, No. 5.
2. Amendment filed 1-28-76; effective thirtieth day thereafter (Register 76, No. 5).
3. Renumbering and amendment of Section 741 to Section 795 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

§ 742. Procedure on Petitions.

HISTORY

1. Amendment filed 3-10-60; effective thirtieth day thereafter (Register 60, No. 5).
2. Renumbering and amendment of Section 742 to Section 796 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

§ 743. Changes Prior to Notice of an Application.

HISTORY

1. New section filed 3-10-60; effective thirtieth day thereafter (Register 60, No. 5).
2. Renumbering and amendment of Section 743 to Section 797 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

§ 744. Changes to Cover Incidental Uses of a Reservoir.

HISTORY

1. New section filed 3-19-64; effective thirtieth day thereafter (Register 64, No. 6).
2. Amendment filed 12-7-67 as organizational and procedural; effective upon filing (Register 67, No. 49).
3. Renumbering and amendment of Section 744 to Section 798 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

Article 9. Protests and Answers

§ 745. Protest Requirements.

Protests shall be submitted in writing with a duplicate copy to the applicant and shall substantially comply with the following requirements.

(a) Each protest shall include the name and address of the protestant and show that the protestant has read either the application or the related notice.

(b) If the protest is based on interference with a prior right, there shall be an allegation of specific injury to protestant which will result from the proposed appropriation. The protest shall state the basis of protestant's claim of right to use water and when the use began, the use which has been made in recent years, and present use. The location of protestant's point of diversion shall be described with sufficient accuracy so that the position thereof relative to the point of diversion proposed by applicant may be determined.

(c) The allegation that the proposed appropriation would not be within the board's jurisdiction, would not best conserve the public interest or public trust uses, would have an adverse environmental impact, or would be contrary to law shall be accompanied by a statement of facts supporting the allegation.

(d) Protestant should call attention to any amendment of the application or other grounds for settlement which, if agreed upon, would result in withdrawal of the protest.

(e) The protest shall indicate the manner in which service upon the applicant of a duplicate copy of the protest has been made.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 1330 AND 1331, WATER CODE; AND NATIONAL AUDUBON SOCIETY V. SUPERIOR COURT OF ALPINE COUNTY, 33 CAL.3D 419, 189 CAL.RPTR. 346, 658 P.2D 709 (1983).

HISTORY

1. Renumbering and amendment of Section 719 to Section 745 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 74, No. 19.

§ 746. Claim of Right Without Compliance with Statutory Procedure.

A protest based upon a claim of interference with an alleged appropriative or prescriptive right which has not been adjudicated and which is based solely upon use of water commenced since December 19, 1914, without compliance with statutory procedure, will not be accepted.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 1330 AND 1331, WATER CODE; AND PEOPLE V. SHIROKOW, 26 CAL.3D 301, 162 CAL.RPTR. 30, 605 P.2D 859 (1980).

HISTORY

1. Renumbering and amendment of Section 719.5 to Section 746 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Registers 60, No. 5 and 55, No. 17.

§ 747. Time for Filing.

Protests shall be filed within the time stated in the notice of the application or such further time as may, for good cause, be allowed by the board.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: SECTIONS 1331 AND 1331, WATER CODE.

HISTORY

1. Amendment filed 12-1-55; effective thirtieth day thereafter (Register 55, No. 17).
2. Amendment filed 3-10-60; effective thirtieth day thereafter (Register 60, No. 5).
3. Renumbering and amendment of former Section 747 to Section 775, and renumbering and amendment of Section 720 to Section 747 filed 1 -16-87; effective thirtieth day thereafter (Register 87, No. 10).

§ 748. Service of Supplements and Correspondence.

A copy of any supplement to the protest or letter concerning the protest shall be served upon the opposing party.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: SECTIONS 1330, 1331, 1340, 1341, 1350 AND 1352, WATER CODE.

HISTORY

1. Amendment filed 12-1-55; effective thirtieth day thereafter (Register 55, No. 17).
2. Amendment filed 3-10-60; effective thirtieth day thereafter (Register 60, No. 5).
3. Renumbering and amendment of former Section 748 to Section 776, and renumbering and amendment of Section 721 to Section 748 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 76, No. 36.

§ 749. Rejection of Protest.

A protest will not be accepted if it fails substantially to comply with the requirements of Section 745, fails to state a valid ground of protest, or is based upon issues which are not within the jurisdiction of the board; provided, however, that the board will allow reasonable opportunity to correct a protest or to reach a settlement with the applicant. Since an upstream water user can take water before it reaches a downstream applicant, a protest based upon interference with a prior right of such upstream user normally will not be accepted.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: SECTIONS 1304 AND 1331, WATER CODE.

HISTORY

1. Amendment filed 12-1-55, effective thirtieth day thereafter (Register 55, No. 17).
2. Amendment filed 3-10-60 effective thirtieth day thereafter (Register 60, No. 5).
3. Renumbering and amendment of former Section 749 to Section 777, and renumbering and amendment of Section 722 to Section 749 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

§ 750. Abandonment of Protest.

Failure of a protestant to respond to correspondence from the board concerning the protest may be interpreted as an abandonment of interest therein. Should such failure occur, the board may, by certified mail, direct the protestant to respond. Failure to respond to such direction within 30 days from

the date upon which the letter is received shall be deemed an abandonment of the protest and the protest shall be dismissed without further notice.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 1304, 1331, 1331, 1340, 1341, 1342, 1351 AND 1352, WATER CODE.

HISTORY

1. Renumbering and amendment of Section to Section 750 filed 1 -16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 76, No. 36.

§ 751. Answers to Protests.

The applicant should file an answer to each protest. To facilitate resolution of protests, answers shall be filed not later than 15 days following notification of acceptance of the protest, unless additional time is allowed by the board. A copy of the answer shall be served on the protestant. A statement that protestant has been served shall be filed with the answer together with an indication of the manner of service.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 1252 AND 1330, WATER CODE.

HISTORY

1. Renumbering and amendment of Section 724 to Section 752 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 64, NO. 6.

§ 752. Content of Answers.

If the applicant files an answer to a protest, the answer shall be responsive to the allegations contained in the protest. It should indicate the line of defense which will be presented and any possibilities for settlement of the protest which the applicant may suggest.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 1252 AND 1330, WATER CODE.

HISTORY

1. Renumbering and amendment of Section 724 to Section 752 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 64, No. 6.

§ 753. Extension of Time for Negotiation.

A request for extension of time within which to file a protest or answer thereto in order to enable negotiation of conflicting claims shall be accompanied by a showing of diligent good faith efforts to reach an agreement between the parties with reasonable prospects of success.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 1220 AND 1331, WATER CODE.

HISTORY

1. Renumbering and amendment of Section 720 to Section 753 filed 1 -16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 60, No. 5.

§ 754. Establishment of Relationship.

History

1. Amendment filed 12-1-55; effective thirtieth day thereafter (Register 55, No. 17).
2. Amendment filed 3-10-60; effective thirtieth day thereafter (Register 60, No. 5).
3. Renumbering and amendment of Section 754 to Section 762 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

Article 10. Investigations

§ 755. Board May Conduct - Cooperation by Parties.

The board may, in its discretion, conduct a field investigation of the water and other resources affected by an application. The parties may be requested to confer and cooperate with the engineer and other representatives of the board designated to carry our such investigations.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 183, 1051, 1250, AND 1251, WATER CODE; AND SECTIONS 21082, 21082.2 AND 21100, PUBLIC RESOURCES CODE.

History

1. Renumbering of former Section 760 to Section 755 and amendment filed 12-1-55; effective thirtieth day thereafter (Register 55, No. 17).
2. Amendment filed 3-10-60; effective thirtieth day thereafter (Register 60, No. 5).
3. Renumbering and amendment of former Section 755 to Section 732, and renumbering and amendment of Section 728 to Section 755 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

§ 756. Benefits and Detriments; Alternative Projects.

(a) Analysis. The board shall at the request of any party or on its own motion, to the extent practicable, identify and evaluate the benefits and detriments, including but not limited to economic and environmental factors, of the present and prospective beneficial uses of the waters involved and alternative means of satisfying or protecting such uses, and make findings with respect thereto. For example, if releases of stored water may be required in connection with a project, any party may request that the board analyze the potential benefits and detriments, if any, of such releases. These benefits and detriments may be both economic and environmental. Some examples are possible enhancement or mitigation of flows and enhancement or mitigation of water quality downstream which may, in turn, result in economic benefit or economic mitigation to downstream water users and cause a reduction in economic benefit to direct users of project water by reducing the amount of water available for their use.

(b) Source of Information. The applicant may be required, and other parties may be requested, to provide such information as is determined necessary by the board to prepare the evaluation provided for by this section. The board will use the environmental documents prepared for the project and evidence

received in any proceeding relative to the application as sources of information to the fullest extent possible.

(c) Time for Filing Request. Any request by a party that the board make the evaluation called for by this section must be received prior to the date of notice of hearing or notice that the board will conduct proceedings in lieu of hearing.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 100, 174, 275, 1242.5, 1243, 1251, 1253, 1256, 1257, 1258, 1391, 1394, 13000, 13001, 13050, 13140, 13141, 13142, 13170 AND 13240, WATER CODE.

HISTORY

1. *Renumbering of former Section 758 filed 12-1-55; effective thirtieth day thereafter (Register 55, No. 17).*
2. *Amendment filed 3-10-60; effective thirtieth day thereafter (Register 60, No. 5).*
3. *Renumbering and amendment of former Section 756 to Section 732, and renumbering and amendment of Section 729 to Section 756 filed 1 -16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 75, No. 13.*

§ 757. Filing for Service of a Subdivision (Leasing).

HISTORY

1. *Repealer filed 12-1-55; effective thirtieth day thereafter (Register 55, No. 17).*

Article 11. Hearings and Proceedings in Lieu of Hearing

§ 760. Hearings on Water Right Applications and Other Water Right Matters.

Adjudicative hearings on water right applications and other water right matters shall be conducted in accordance with the procedures set forth in article 2 of chapter 1.5 of this division. Nothing in this section shall limit the Board's authority to conduct nonadjudicative informational hearings.

NOTE: AUTHORITY CITED: SECTIONS 185 AND 1058, WATER CODE.

REFERENCE: SECTIONS 183, 1051, 1342, 1345, 1346, 1347, 1348, 1350, 1391 AND 1394, WATER CODE.

HISTORY

1. *New Article 17.1 (Section 760) filed 11-24-71; effective thirtieth day thereafter (Register 71, No. 48).*
2. *Renumbering and amendment of former Section 760 to Section 700, and renumbering and amendment of Section 737 to Section 760 filed 1 -16-87; effective thirtieth day thereafter (Register 87, No. 10).*
3. *Repealer and new section filed 3-26-98 as an interim regulation pursuant to Government Code section 11400.20; operative 3-26-98 (Register 98, No. 13). Interim regulations expire 12-31-98 unless earlier amended or repealed.*
4. *Pursuant to Government Code section 11400.20(b)(2), interim regulations extended to 3-31-99 by filing of permanent regulations with OAL on 11-25-98. Adoption of permanent regulations disapproved by OAL 1-12-99; resubmitted by the State Water*

Resources Control Board on 3-10-99; and filed with the Secretary of State on 3-31-99, effective upon filing (Register 99, No. 14).

§ 761. Procedure at Hearings.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: SECTIONS 183, 1051, 1251 AND 1353, WATER CODE.

HISTORY

1. *New Article 17.2 (ss 761, 762, 763) filed 3-23-73; effective thirtieth day thereafter (Register 73, No. 12). 2. Amendment of subsection (a) filed 3-27-75; effective thirtieth day thereafter (Register 75, No. 13).*
2. *Amendment of subsection (a) filed 1-28-77; effective thirtieth day thereafter (Register 77, No. 5).*
3. *Amendment filed 8-1-78; effective thirtieth day thereafter (Register 78, No. 31).*
4. *Renumbering and amendment of former Section 761 to Section 780, and renumbering and amendment of Section 733 to Section 761 filed 1 -16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 80, No. 3.*
5. *Editorial correction amending numerical sequence of Histories (Register 98, No. 13).*
6. *Repealer filed 3-26-98 as an interim regulation pursuant to Government Code section 11400.20; operative 3-26-98 (Register 98, No. 13). Interim regulations expire 12-31-98 unless earlier amended or repealed.*
7. *Permanent repealer filed 3-31-99 (Register 99, No. 14).*

§ 762. Witnesses and Exhibits.

NOTE: AUTHORITY CITED: SECTIONS 185 AND 1058, WATER CODE.
REFERENCE: SECTIONS 183 AND 1051, WATER CODE.

HISTORY

1. *Renumbering and amendment of former Section 762 to Section 781, and renumbering and amendment of Section 735.5 to Section 762 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Registers 79, No. 27 and 78, No. 12.*
2. *Repealer filed 3-26-98 as an interim regulation pursuant to Government Code section 11400.20; operative 3-26-98 (Register 98, No. 13). Interim regulations expire 12-31-98 unless earlier amended or repealed.*
3. *Permanent repealer filed 3-31-99 (Register 99, No. 14).*

§ 762.5. Passage of Water for Fish.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: CHAPTER 6, PART 2, DIVISION 2, WATER CODE.

HISTORY

1. *New section filed 4-24-75; effective thirtieth day thereafter (Register 75, No. 17).*
2. *Renumbering and amendment of Section 762.5 to Section 782 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).*

§ 763. Subpoenas.

NOTE: AUTHORITY CITED: SECTIONS 185 AND 1058, WATER CODE.
REFERENCE: SECTIONS 183, 1080, 1082, 1083, 1084, 1085, 1086 AND 1090, WATER CODE.

History

1. *Amendment filed 2-28-75; effective thirtieth day thereafter (Register 75, No. 9). For prior history, see Register 73, No. 12.*
2. *Renumbering and amendment of former Section 763 to Section 783, and renumbering and amendment of Section 732 to Section 763 filed 1 -16-87; effective thirtieth day thereafter (Register 87, No. 10).*
3. *Repealer filed 3-26-98 as an interim regulation pursuant to Government Code section 11400.20; operative 3-26-98 (Register 98, No. 13). Interim regulations expire 12-31-98 unless earlier amended or repealed.*
4. *Permanent repealer filed 3-31-99 (Register 99, No. 14).*

§ 763.5. Release of Stored Water.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: CHAPTER 6, PART 2, DIVISION 2, WATER CODE.

History

1. *New section filed 3-27-75; effective thirtieth day thereafter (Register 75, No. 13).*
2. *Amendment of subsection (b) filed 10-1-75; effective thirtieth day thereafter (Register 75, No. 40).*
3. *Renumbering and amendment of Section 763.5 to Section 784 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).*

§ 764. Combined Hearings.

The board may hold a hearing to obtain evidence necessary to allow it to adopt or amend a water quality control plan pursuant to Water Code Section 13170 in combination with a hearing regarding a specific water right application or petition for a change, or in connection with a hearing regarding an exercise of the board's reserved jurisdiction. Whenever the board decides to hold a combined hearing and to make only one record for the combined proceeding, the board's hearing shall meet all of the requirements of Part 2 (commencing with Section 1200) of Division 2 of the Water Code.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: SECTIONS 179, 179.6 AND 183, WATER CODE.

History

1. *New Article 17.3 (Sections 764, 764.5-764.8) filed 1-25-74; effective thirtieth day thereafter (Register 74, No. 4).*
2. *Amendment filed 6-26-75; effective thirtieth day thereafter (Register 75, No. 26).*
3. *Renumbering and amendment of former Section 764 to Section 820, and new Section 764 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).*

§ 764.5. Investigation of Complaints.

History

1. *Renumbering and amendment of Section 764.5 to Section 821 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 74, No. 4.*

§ 764.6. Action by the Board.

History

1. *Renumbering and amendment of Section 764.6 to Section 822 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 74, No. 4.*

§ 764.7. Action on the Board's Own Motion.

History

1. *Renumbering and amendment of Section 764.7 to Section 823 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 74, No. 4.*

§ 764.8. Licenses.

History

1. *Repealer filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 74, No. 4.*

§ 764.9. Policy.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: SECTION 275, CHAPTER 2.5, DIVISION 1 AND PART 2, DIVISION 2, WATER CODE.

History

1. *New section filed 1-28-77; effective thirtieth day thereafter (Register 77, No. 5).*
2. *Renumbering and amendment of Section 764.9 to Section 855 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).*

§ 764.10. Investigations.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

History

1. *New Article 17.4 (Sections 764.10-764.13) filed 5-22-75; effective thirtieth day thereafter (Register 75, No. 21).*
2. *Amendment filed 6-24-77; effective thirtieth day thereafter (Register 77, No. 26).*
3. *Renumbering and amendment of Section 764.10 to Section 856 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).*

§ 764.11. Notifications and Orders.

History

1. *Amendment filed 6-24-77; effective thirtieth day thereafter (Register 77, No. 26). For prior history, see Register 75, No. 21.*
2. *Renumbering and amendment of Section 764.11 to Section 857 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).*

§ 764.12. Noncompliance with Order: Revocation of Entitlement.

History

1. *Amendment filed 6-24-77; effective thirtieth day thereafter (Register 77, No. 26).*
2. *Change without regulatory effect repealing section filed 3-26-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 13).*

§ 764.13. Noncompliance with Order: Enforcement by Attorney General.

History

1. *Amendment filed 6-24-77; effective thirtieth day thereafter (Register 77, No. 26).*
2. *Change without regulatory effect repealing section filed 3-26-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 13).*

§ 764.14. Alternative Procedure.

The procedures established in this article shall be construed as alternative to, and not exclusive of, the procedures established in Chapter 5 of Title 23, California Administrative Code, in accordance with Section 4007 therein.

NOTE: AUTHORITY CITED: SECTIONS 185 AND 1058, WATER CODE.

REFERENCE: SECTION 275, WATER CODE.

History

1. *New section filed 7-6-79; effective thirtieth day thereafter (Register 79, No. 27).*

§ 764.20. Conservation and Protection of Water Within the Sacramento-San Joaquin Delta and Its Tributary Streams.

NOTE: ADDITIONAL AUTHORITY CITED: SECTIONS 100, 275, 13000-13001 AND 13140, WATER CODE.

REFERENCE: CHAPTERS 1 AND 3, DIVISION 7, WATER CODE.

History

1. *Repealer filed 2-9-78 as an emergency; effective upon filing (Register 78, No. 6). For prior history, see Register 77, Nos. 24, 33 and 51.*
2. *Certificate of Compliance as to 2-9-78 repealer filed 4-14-78 (Register 78, No. 15).*

§ 765. Hearings to Be Held Promptly.

Protested applications will be heard as promptly as practicable in light of all the circumstances. Requests for inordinate delay of hearings or in conducting stipulated proceedings in lieu of hearing will be denied.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 179.6, 183 AND 1051, WATER CODE.

History

1. *Amendment filed 3-10-60; effective thirtieth day thereafter (Register 60, No. 5).*
2. *Renumbering and amendment of former Section 765 to Section 830, and renumbering and amendment of Section 736 to Section 765 filed 1 -16-87; effective thirtieth day thereafter (Register 87, No. 10).*

§ 766. Failure to Appear -Effect.

Any party who fails to appear at a hearing will not be entitled to a further opportunity to be heard unless good cause for such failure is shown to the board within five days thereafter. The lack of such showing of good cause may, in the discretion of the board, be interpreted as an abandonment of interest in the application.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: SECTIONS 183 AND 1352, WATER CODE.

HISTORY

1. Amendment filed 3-10-60; effective thirtieth day thereafter (Register 60, No. 5).
2. Renumbering and amendment of former Section 766 to Section 831, and renumbering and amendment of Section 731 to Section 766 filed 1 -16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 64, No. 6.

§ 767. Hearings in Response to Drought Emergency Conditions.

(a) Any hearing held to consider the taking of action in response to drought emergency conditions shall receive calendar priority over other matters pending hearing before the board.

(b) The board shall give notice of any hearing to consider action in response to drought emergency conditions at least seven days prior to the hearing. The provisions of Section 648.4 of Article 2, relating to submitting proposed exhibits, shall not apply to any such hearing. The time for submitting such materials shall be as specified in the hearing notice.

(c) In addition to any other issues specified in the hearing notice as issues upon which the parties should submit information, the parties to any such hearing shall address the following issues: (1) Existence of a bona fide drought emergency, including information to enable evaluation of the seriousness of the emergency; (2) water conservation measures which have been implemented in the area being served; and (3) availability of alternative sources of water supply, including reclaimed water.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: SECTION 275, 1425, 1427, 1428, 1430 AND 1431, WATER CODE.

HISTORY

1. Amendment filed 3-10-60; effective thirtieth day thereafter (Register 60 , No. 5). (Ed. Note-Similar to former Section 766.)
2. Renumbering and amendment of former Section 767 to Section 832, and renumbering and amendment of Section 736.1 to Section 767 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 77, No. 17.
3. Change without regulatory effect amending subsection (b) filed 9-25-2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 39).
4. Editorial correction amending subsection (a) (Register 2005, No. 17).

Article 12. Reconsideration and Amendments of Board Water Right Decision and Orders

§ 768. Reconsideration of Board Decisions and Orders.

No later than thirty (30) days after adoption by the board of a decision or order, any person interested in any application, permit or license affected by the decision or order may petition the board for reconsideration of the matter upon any of the following causes:

(a) Irregularity in the proceedings, or any ruling, or abuse of discretion, by which the person was prevented from having a fair hearing;

(b) The decision or order is not supported by substantial evidence;

(c) There is relevant evidence which, in the exercise of reasonable diligence, could not have been produced;

(d) Error in law.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 1122 AND 1123, WATER CODE.

HISTORY

1. Repealer of former Section 768, and renumbering and amendment of Section 737.1 to Section 768 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 75, No. 21.

2. Change without regulatory effect amendingNote filed 4-6-2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 14).

§ 769. Petition for Reconsideration.

(a) Any petition for reconsideration of a decision or order shall be submitted in writing and shall contain the following:

(1) Name and address of the petitioner.

(2) The specific board action of which petitioner requests reconsideration.

(3) The date on which the order or decision was made by the board.

(4) The reason the action was inappropriate or improper.

(5) The specific action which petitioner requests.

(6) A statement that copies of the petition and any accompanying materials have been sent to all interested parties.

(b) If reconsideration is requested based in whole or in part on Section 768, subdivision (c), the petition shall include an affidavit or declaration under penalty of perjury stating that additional evidence is available that was not presented to the board and the reason it was not presented. A general statement of the nature of the evidence and of the facts to be proved shall also be included.

(c) The petition shall be accompanied by a statement of points and authorities in support of legal issues raised in the petition.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 1122 AND 1123, WATER CODE.

HISTORY

1. Amendment filed 3-10-60; effective thirtieth day thereafter (Register 60, No. 5).

2. Renumbering and amendment of former Section 769 to Section 833, and renumbering and amendment of Section 737.2 to Section 769 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 75, No. 21.

3. Change without regulatory effect amending subsection (b) and Note filed 4-6-2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 14).

§ 770. Board Action.

(a) The board may:

(1) Refuse to reconsider the decision or order if the petition fails to raise substantial issues related to the causes for reconsideration set out in Section 768; or

(2) After review of the records, including any hearing transcript and any material submitted in support of the petition:

(A) Deny the petition upon a finding that the decision or order was appropriate and proper; or

(B) Set aside or modify the decision or order; or

(C) Take other appropriate action.

Before taking final action, the board may, in its discretion, hold a hearing for the purpose of oral argument or receipt of additional evidence or both.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 183, 1122 AND 1123, WATER CODE.

HISTORY

1. *Amendment filed 3-10-60; effective thirtieth day thereafter (Register 60, No. 5).*
2. *Renumbering and amendment of former Section 770 to Section 834, and renumbering and amendment of Section 737.4 to Section 770 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 75, No. 21.*
3. *Editorial correction amending subsection (a)(1) (Register 2005, No. 17).*
4. *Change without regulatory effect amendingNote filed 4-6-2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 14).*

§ 771. Procedure Relating to Hearings.

The provisions of Article 11 of the subchapter insofar as they are applicable shall govern hearings under this article.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 183, 1051, 1080, 1122 AND 1123, WATER CODE.

HISTORY

1. *Amendment filed 3-10-60; effective thirtieth day thereafter (Register 60, No. 5).*
2. *Renumbering and amendment of former Section 771 to Section 835, and renumbering and amendment of Section 737.5 to Section 771 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 75, No. 21.*
3. *Change without regulatory effect amendingNote filed 4-6-2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 14).*

§ 772. Issuance of Separate Permits and Licenses.

HISTORY

1. *New section filed 12-7-67 as organizational and procedural; effective upon filing (Register 67, No. 49).*
2. *Renumbering and amendment of Section 772 to Section 836 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).*

Article 13. Right of Access

§ 775. Right of Access Over Lands Not Owned by Applicant.

When the applicant will need to occupy property or to use existing works not owned by him, it will generally be sufficient for the applicant to state in writing that the consent of the owner has been obtained, provided there is no denial. When the owner will not consent, the board may require satisfactory evidence of the applicant's ability through condemnation proceedings or otherwise to secure the necessary right of access before the application will be approved. For good cause shown, the board may allow reasonable time for the applicant to negotiate with the owner for the necessary right of access.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 1250, 1252, 1253, 1257 AND 1260, WATER CODE.

HISTORY

1. *Renumbering and amendment of Section 747 to Section 775 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 60, No. 5.*
2. *Editorial correction amending section (Register 2005, No. 17).*

§ 776. Where Public Agency Permission or Approval Is Required.

If the proposed project will require a permit, license, or approval from another public agency or officer and it become evident that regardless of the action taken by the board, such permit, license, or approval could not be secured from the proper agency, the application will be rejected.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 1250 AND 1255, WATER CODE.

HISTORY

1. *Amendment filed 3-10-60; effective thirtieth day thereafter (Register 60, No. 5). (Ed. Note -Similar to former Section 778.)*
2. *Amendment filed 3-19-64; effective thirtieth day thereafter (Register 64, No. 6).*
3. *Renumbering and amendment of former Section 776 to Section 840, and renumbering and amendment of Section 748 to Section 776 filed 1 -16-87; effective thirtieth day thereafter (Register 87, No. 10).*

§ 776.5. Requests for Extension of Time Under Permit.

HISTORY

1. *New section filed 12-1-55; effective thirtieth day thereafter (Register 55, No. 17).*
2. *Repealer filed 3-10-60; effective thirtieth day thereafter (Register 60, No. 5).*

§ 777. Right of Access over Lands Where Title Is Disputed.

The board will not undertake to determine title to land or the right to occupy or use land or other property. A dispute concerning applicant's title or right to occupy or use land or other property necessary for consummation of the proposed appropriation is not cause for denial of an application. A protest

based solely upon such disputed title or right will ordinarily be rejected as not presenting an issue within the board's jurisdiction; provided that the board may temporarily defer action on an application pending judicial determination of applicant's title or right to occupy or use property when in the board's judgment such action is justified.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTION 1250, WATER CODE.

HISTORY

1. *Amendment filed 3-10-60; effective thirtieth day thereafter (Register 60, No. 5). (Ed. Note - Similar to former Section 776.)*
2. *Renumbering and amendment of former Section 777 to Section 841, and renumbering and amendment of Section 749 to Section 777 filed 1 -16-87; effective thirtieth day thereafter (Register 87, No. 10).*

§ 778. Request for Extension of Time Under Permits.

HISTORY

1. *Amendment filed 3-10-60; effective thirtieth day thereafter (Register 60, No. 5). (Ed. Note -Similar to former Section 776.5.)*
2. *Renumbering and amendment of Section 778 to Section 842 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).*

§ 778.5. Notice of Petitions and Protests.

HISTORY

1. *New section filed 5-9-74; effective thirtieth day thereafter (Register 74, No. 19).*
2. *Amendment of subsection (a) filed 1-28-76; effective thirtieth day thereafter (Register 76, No. 5).*
3. *Renumbering and amendment of Section 778.5 to Section 843 filed 1-16-87 effective thirtieth day thereafter (Register 87, No. 10).*

§ 779. Cause for Extension of Time.

HISTORY

1. *Amendment filed 3-10-60; effective thirtieth day thereafter (Register 60, No. 5).*
2. *Amendment filed 3-19-64; effective thirtieth day thereafter (Register 64, No. 6).*
3. *Amendment filed 12-24-71; effective thirtieth day thereafter (Register 71, No. 48).*
4. *Editorial correction (Register 72, No. 27).*
5. *Renumbering and amendment of Section 779 to Section 844 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).*

Article 14. Standard Permit Terms and Conditions

§ 780. Standard Permit Terms.

The board maintains a list of Standard Permit Terms, applicable portions of which are included in all permits. Copies of the Standard Permit Terms are available upon request. In addition to the applicable standard terms which are included in each permit, the following terms shall be included in every water

right permit issued by the board, and shall be included in every existing permit as a condition for granting an extension of time to commence or to complete construction work or to apply the water to full beneficial use:

(a) Continuing Authority. Pursuant to California Water Code Sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) to installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation. The continuing authority of the board also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Sec. 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust.

(b) (1) Water Quality Objectives. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the board finds that (1) adequate waste discharge requirements have been prescribed and are

in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

(c) Automatic Approval of Permits. Permits approved in accordance with the provisions of Government Code Section 65956 which provides for automatic approval of development applications under certain conditions shall contain terms (a) and (b) of this section and all other applicable Standard Permit Terms, and the season of diversion authorized by the permit shall be consistent with past decisions of the board concerning availability of unappropriated water in the watershed in question.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 100, 106, 275, 1243.5, 1250, 1252, 1253, 1391, 1394, AND DIVISION 7, WATER CODE; NATIONAL AUDUBON SOCIETY V. SUPERIOR COURT OF ALPINE COUNTY 33 CAL.3D 419, 189 CAL.RPTR. 346, 658 P.2D 709 (1983); AND SECTION 2, ARTICLE X, CALIFORNIA CONSTITUTION.

HISTORY

1. *Renumbering and amendment of Section 766 to Section 780 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 78, No. 31.*

§ 781. Public Access for Fishing.

In compliance with Fish and Game Code Section 5943, all permits for storage of water on a stream naturally frequented by fish shall require the permittee to accord to the public, for the purpose of fishing, reasonable right of access to the waters impounded by the dam under the permit during the open season for the taking of fish, subject to the regulations of the Fish and Game Commission and, for domestic water supply reservoirs, subject to applicable public health requirements contained in Title 17 of the California Administrative Code.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTION 1253, WATER CODE.

HISTORY

1. *New section filed 8-24-73; effective thirtieth day thereafter (Register 73, No. 34).*
2. *Renumbering and amendment of former Section 781 to Section 845, and renumbering and amendment of Section 762 to Section 781 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 73, No. 12.*

§ 782. Passage of Water for Fish.

In compliance with Section 5937 of the Fish and Game Code, all permits for diversion of water from a stream by means of a dam which do not contain a more specific provision for the protection of fish shall require the permittee to allow sufficient water at all times to pass through a fishway, or in the absence of a fishway, allow sufficient water to pass over, around, or through the dam to

keep in good condition any fish that may be planted or exist below the dam; provided that during a period of low flow in the stream, upon approval of the Department of Fish and Game, this requirement will be satisfied if sufficient water is passed through a culvert, waste gate, or over or around the dam to keep in good condition any fish that may be planted or exist below the dam if it is impracticable or detrimental to pass the water through a fishway. In the case of a reservoir, this provision shall not require the passage or release of water at a greater rate than the unimpaired natural inflow into the reservoir.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: SECTIONS 1390 AND 1394, WATER CODE.

HISTORY

1. *New Article 20 (s782) filed 3-10-60; effective thirtieth day thereafter (Register 60, No. 5). (Ed. Note -Similar to former Section 779.)*
2. *Renumbering and amendment of former Section 782 to Section 847, and renumbering and amendment of Section 762,5 to Section 782 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 75, No. 17.*

§ 783. Waste Discharge Requirements.

When the permittee is or will be required to file a report of waste discharge pursuant to Section 13260 of the Water Code, the permit shall contain the following term: No water shall be used under this permit until the permittee has filed a report of waste discharge with the California Regional Water Quality Control Board, _____ Region, pursuant to Water Code Section 13260, and the regional board or State Water Resources Control Board has prescribed waste discharge requirements or has indicated that waste discharge requirements are not required. Thereafter, water may be diverted only during such times as all requirements prescribed by the regional board or state board are being met. No discharges of waste to surface water shall be made unless waste discharge requirements are issued by a regional board or the state board. A discharge to groundwater without issuance of a waste discharge requirement may be allowed if after filing the report pursuant to Section 13260: (1) The regional board issues a waiver pursuant to Section 13269, or (2) The regional board fails to act within 120 days of the filing of the report.

No permittee shall be required to file a report of waste discharge pursuant to Section 13260 of the Water Code for percolation to the groundwater of water resulting from the irrigation of crops.

HISTORY

1. *New section filed 1-28-77; effective thirtieth day thereafter (Register 77, No. 5).*
2. *Renumbering and amendment of former Section 783 to Section 848, and renumbering and amendment of Section 763 to Section 783 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Registers 75, No. 9 and 73, No. 12.*

§ 784. Release of Stored Water.

(a) In exercising its discretionary authority respecting applications to appropriate water, including prescribing or modifying permit terms and conditions, the board may require releases of water diverted and stored whenever such releases are determined by the board to be in the public interest or are needed to protect public trust uses of water, if such requirement is reasonable under Article X, Section 2 of the California Constitution.

(b) Notwithstanding subsection (a) of this section, after a permit has been issued and construction has commenced or substantial financial commitment for construction has been undertaken by the permittee, the board will not require a release or bypass of water authorized to be appropriated by such permit unless the permittee agrees to such bypass or release or unless the board at the time the permit was issued expressly reserved jurisdiction to require such bypass or release. This subsection shall not apply to the continuing authority of the board to regulate appropriations of water so as to conform with Section 780 of this subchapter, or to revoke permits as provided in Article 5, Chapter 6, Part 2, Division 2 of the California Water Code. This subsection shall not apply to actions required to implement the provisions of Article 3 (commencing with Section 11460) of Chapter 3, Part 3, Division 6, or Part 4.5 (commencing with Section 12200) of Division 6 of the California Water Code.

(c) Before requiring releases of water pursuant to subsection (a) of this section over the objection of the applicant or permittee, the board will hold a hearing and make findings with respect thereto. The hearing will be limited to a consideration of (1) the basis of any recommendation of the Department of Fish and Game pursuant to Water Code Section 1243; (2) whether such releases are necessary to maintain or enhance beneficial uses or to meet water quality objectives in the relevant water quality control plan; (3) the probable effect of releases upon the applicant's proposed project; (4) evidence to assist in the preparation of dry and critical year relief provisions related to releases; and (5) any other issues which may be relevant to the appropriateness of a release requirement.

(d) The quantity of water required to be released from storage shall be reduced in dry and critical years as defined by the board on a basis determined by the board to be equitable after considering and balancing the effect of reduced quantity upon downstream conditions and upon permittee's project.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTION 100, 174, 275, 2142.5, 1253, 1256, 1257, 1258, 1391, 13000, 13001, 13050, 13140, 13141, 13142, 13170 AND 13240, WATER CODE; AND NATIONAL AUDUBON SOCIETY V. SUPERIOR COURT OF ALPINE COUNTY, 33 CAL.3D 419, 189 CAL.RPTR. 346, 658 P.2D 709 (1983).

History

1. *Renumbering and amendment of Section 763.5 to Section 783 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 75, No. 40.*

§ 785. Surface Diversion or Storage.

History

1. *New Article 20 (ss 785 and 786) filed 12-1-55; effective thirtieth day thereafter (Register 55, No. 17).*
2. *Renumbering to Article 21 and amendment filed 3-10-60; effective thirtieth day thereafter (Register 60, No. 5).*
3. *Renumbering and amendment of Section 785 to Section 846 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).*

§ 786. Underground Storage.

History

1. *Amendment filed 3-10-60; effective thirtieth day thereafter (Register 60, No. 5).*
2. *Renumbering and amendment of Section 786 to Section 846 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).*

§ 790. Revocation Hearings.

History

1. *New Article 22 (ss 790, 791, 792) filed 3-10-60; effective thirtieth day thereafter (Register 60, No. 5).*
2. *Renumbering and amendment of Section 790 to Section 850 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).*

Article 15. Changes in Point of Diversion, Place of Use, or Purpose of Use

§ 791. Change Petitions.

(a) After notice of an application to appropriate water has been given pursuant to Article 3, changes in point of diversion, place of use, or purpose of use as stated in the application, permit, or license may be allowed only upon petition and provided that the petitioner establishes that the proposed change(s) will neither in effect initiate a new right nor injure any other legal user of water.

(b) Upon petition under Water Code Section 1740, the board may approve changes in point of diversion, place of use or purpose of use in a water right determined by a court decree issued pursuant to Water Code Section 2500 et seq. after January 1, 1981. The petitioner shall provide the same factual basis for a temporary, long-term, or permanent change in a water right determined under Water Code Section 2500 et seq. as would be required for a temporary, long-term, or permanent change under a permit or license.

(c) See Sections 686, 730 and 799 regarding the addition of generation of power as a purpose of use.

(d) For purposes of Article 15 and 16, "petition" shall be deemed to include the notice or notification provided by the water right holder under Water Code Sections 1726 and 1727.

(e) The procedures set forth in Articles 15, 16, 16.5 and 17 shall be followed as nearly as possible when filing and processing petitions for changes in permits or licenses other than changes in point of diversion, place of use, and purpose of use.

(f) A petition will not be accepted for initial review or filing unless it is accompanied by the filing fee required by chapter 5 (commencing with section 1061) of this division. If after the initial review of a petition described in this section the board does not accept the petition for filing, the board shall refund the petition filing fee, minus the $250 non-refundable initial review fee.

(g) The board may cancel a petition for failure to pay any annual fee for the petition when due.

NOTE: AUTHORITY CITED: SECTIONS 1058 AND 1530, WATER CODE.

REFERENCE: SECTIONS 1525, 1701, 1702, 1725, 1726, 1727, 1735 AND 1740, WATER CODE.

HISTORY

1. *Renumbering and amendment of former section 791 to section 851, and renumbering and amendment of Section 738 to Section 791 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 60, No. 5.*
2. *Amendment of section and Note filed 12-13-93; operative 1-12-94 (Register 93, No. 51).*
3. *Amendment of subsection (c), new subsection (f) and amendment of Note filed 12-23-2003 as an emergency; operative 1-1-2004 (Register 2003, No. 52). Pursuant to Water Code section 1530 this rulemaking action remains in effect until revised by the State Water Resources Control Board.*
4. *Amendment of subsection (f) and new subsection (g) filed 10-14-2004 as an emergency; operative 10-14-2004 (Register 2004, No. 42). Pursuant to Water Code section 1530, this rulemaking action remains in effect until revised by the State Water Resources Control Board.*
5. *Editorial correction amending subsection (a) (Register 2005, No. 17).*

§ 792. Nature of Approval Action.

(a) Prior to issuance of a permit, a petition for change shall set forth amendments to the application or be accompanied by an amended application reflecting the proposed change(s). Thereafter consideration of the application will be based upon the amended application.

(1) If the petition is filed prior to issuance of the notice of application (See Article 3), amendments to the application shall be reflected in the application notice.

(2) If the petition is filed after issuance of the notice of application and prior to issuance of a permit, the application shall be renoticed using the procedures in Article 3.

(b) A proposed change in an existing permit or license, or a proposed change pursuant to Water Code Section 1740 in a water right determined by a court decree issued pursuant to Water Code Section 2500 et seq. after January 1, 1981, may be approved in an order. Any order approving a change will consist of an order designating the new point of diversion, place of use or purpose of use, and any terms and conditions, to be attached to the permit or license as a part thereof. At its option, the board may issue an amended permit or license. For temporary changes, the terms and conditions shall be those necessary to avoid or mitigate adverse impacts that would result from the transfer or to ensure reasonable and beneficial use of water by the transferee during the period of the transfer.

(c) Any order approving a change under Articles 15, 16, 16.5, or 17 shall (1) identify existing rights and current uses of water, (2) designate the amount(s) of water involved in the change, (3) designate the quantities of current and new or temporary beneficial uses of water, (4) designate the existing and new or temporary point(s) of diversion, places(s) of use, and purpose(s) of use, (5) include any required statutory findings, and (6) include any terms and conditions to which approval of the change is subject. Any order approving a change under Articles 15, 16.5, or 17 shall include compliance with any applicable requirements of Division 13 (commencing with Section 21000) of the Public Resources Code.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTION 1435, 1438(A), 1547, 1547.1, 1701, 1702, 1705, 1725, 1726, 1727, 1735 AND 1740, WATER CODE.

HISTORY

1. *Renumbering and amendment of former section 792 to section 852, and renumbering and amendment of Section 738.5 to Section 792 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Registers 64, No. 6 and 60, No. 5.*
2. *Amendment of section heading, text and Note filed 12-13-93; operative 1-12-94 (Register 93, No. 51).*

§ 793. Filing Fee When Multiple Changes or Rights Involved. [Repealed]

NOTE: AUTHORITY CITED: SECTIONS 1058 AND 1530, WATER CODE.

REFERENCE: SECTIONS 1436 AND 1525, WATER CODE.

HISTORY

1. *Renumbering and amendment of section 739 to section 793 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 64, No. 6.*
2. *Amendment of section and Note filed 12-13-93; operative 1-12-94 (Register 93, No. 51).*

3. Amendment of section and Note filed 12-23-2003 as an emergency; operative 1-1-2004 (Register 2003, No. 52). Pursuant to Water Code section 1530 this rulemaking action remains in effect until revised by the State Water Resources Control Board.

4. Repealer filed 10-21-2005 as an emergency; operative 10-21-2005. Water Code section 1530 provides that this filing shall be deemed an emergency and shall remain in effect until revised by the State Water Resources Control Board (Register 2005, No. 42).

5. Editorial correction of History 4 (Register 2008, No. 45).

§ 794. Petition Information and Map Requirements.

(a) A petition for change(s) submitted by a permittee or licensee, or submitted pursuant to Water Code Section 1740 by a holder of a water right determined under Water Code Section 2500 et seq. after January 1, 1981 shall identify the amount(s) and holder(s) of the right(s) involved and shall include the following information and map(s):

(1) The amount(s) of water which would have been diverted, consumptively used, or stored under the water right in the absence of the proposed change(s), (a) during the period for which the change is requested, or (b) in a maximum year if the change is permanent;

(2) The amount(s) of water proposed for change, transfer or exchange;

(3) The existing and the proposed purpose(s) of use of water;

(4) The existing and the proposed point(s) of diversion and rediversion, and the existing and proposed location(s) of any return flow;

(5) The existing and the proposed place(s) of use of the water for various purposes of use;

(6) The existing and the proposed diversion, release and return flow schedules if stored water is involved or if the streamflow regime will be changed;

(7) Any changes in property ownership(s) involved, and the point(s) of diversion and place(s) of use of other known users of water who may be affected by the proposed change(s);

(8) Information identifying any effects of the proposed change(s) on fish, wildlife, and other instream beneficial uses;

(9) Information identifying any effects of the proposed change(s) on other known users of water, including identification in quantitative terms of any projected change in water quantity, water quality, timing of diversion or use, consumptive use of the water, reduction in return flows, or reduction in the availability of water within the streams affected by the proposed change(s);

(10) The parties involved in the proposed change, transfer or exchange;

(11) Map(s) prepared in accordance with Article 7 which describe the proposed change(s), delineate any additional information required by Items (4), (5), and (7) above, and show the hydrologic basin of origin and the streams which could be affected by the proposed change(s).

(12) The proposed place(s) of use for irrigation may be listed as net acreage(s) within gross area(s) shown on a map submitted with the petition.

(b) Water right holders proposing a change in point of diversion, place of use or purpose of use shall provide preliminary information and map(s) required by subdivision (a) to, and shall request consultation with, the Department of Fish and Game and the appropriate Regional Water Quality Control Board regarding the potential effects of the proposed change(s) on water quality, fish, wildlife, and other instream beneficial uses.

(c) Before approval of a change petition, any water right holder petitioning for a change in point of diversion, place of use or purpose of use shall provide to the board all comments of the Department of Fish and Game and the Regional Water Quality Control Board in response to the request for consultation required by subsection (b).

(d) The petition for change(s) will not be accepted for filing unless it contains all of the information required by subdivision (a) and proof that a copy of the petition has been served on the Department of Fish and Game.

NOTE: AUTHORITY CITED: SECTIONS 1058, 1436 AND 1726, WATER CODE.

REFERENCE: SECTIONS 1435, 1436, 1437, 1438(A), 1702, 1726, 1727 AND 1740, WATER CODE.

HISTORY

1. Repealer and new section filed 12-13-93; operative 1-12-94 (Register 93, No. 51). For prior history, see Register 87, No. 10.

§ 795. Notice of Change Petitions.

(a) After a petition has been filed for change(s) in point of diversion, place of use, or purpose of use, the petitioner shall cause notice to be given or published if and as required by the board. The board's notice requirements shall be based on the potential effects of the proposed change(s) on legal users of water and on fish, wildlife, and other instream beneficial uses of water. The board will not ordinarily require that notice be given or published in cases where the proposed change(s) do not have the potential to impair the water supply of other legal users of water or instream beneficial uses, except that in all cases the petitioner shall notify the Department of Fish and Game in writing of the proposed change(s). Examples of petitions for which notice will not ordinarily be required, include the following:

(1) Petition for a change in point of diversion which does not change the point relative to diversion points of others and tributary sources on the same stream;

(2) Petition for a change of place of irrigation use from one parcel to another provided that the return flow is unchanged;

(3) Petition for a change in purpose of which would add clearly incidental uses to, or substitute incidental uses for, permitted or licensed uses which are

themselves incidental to the principal use of water stored in a reservoir. For the purpose of this section, incidental uses are limited to the following beneficial uses of water: stockwatering; fire protection; non-commercial recreation; non-commercial wildlife preservation or enhancement; generation of power; non-industrial dust control; or soil conservation.

(b) At any time any person may file with the board a written request to receive notice of the filing of change petitions. Thereafter the board shall mail or deliver a copy of each such notice to the person filing the request, including a statement of the time within which any protest, comment, or objection must be filed.

NOTE: AUTHORITY CITED: SECTION 1058 AND 1726, WATER CODE.

REFERENCE: SECTIONS 106.7, 110, 1250.5, 1312, 1491, 1703, 1704, 1736 AND 1740, WATER CODE.

HISTORY

1. Renumbering and amendment of section 741 to section 795 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 76, No. 5.

2. Amendment of section heading, text and Note filed 12-13-93; operative 1-12-94 (Register 93, No. 51).

§ 796. Protest Procedure on Change Petitions.

The provisions of Articles 9, 10, and 11, insofar as they are applicable, shall govern protests, answers to protests, investigations, and hearings of petitions for change(s) under Articles 15 and 17, including minor protested petitions for change. The procedures for notification of and objection to temporary changes due to transfer or exchange of water or water rights, or temporary urgency changes are provided in Articles 16 and 16.5 respectively.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 1438, 1703, 1704, 1704.1, 1704.2, 1704.3, 1725, 1736 AND 1740, WATER CODE.

HISTORY

1. Renumbering and amendment of section 742 to section 796 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 60, No. 5.

2. Amendment of section heading, text and Note filed 12-13-93; operative 1-12-94 (Register 93, No. 51).

§ 797. Changes Prior to Notice of an Application.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTION 1701, WATER CODE.

HISTORY

1. Renumbering and amendment of section 742 to section 796 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 60, No. 5.

2. Repealer filed 12-13-93; operative 1-12-94 (Register 93, No. 51).

§ 798. Changes to Cover Incidental Uses of a Reservoir.

When an applicant, permittee or licensee proposes incidental use of a reservoir for stockwatering, fire protection, recreation, fish culture, or other similar purposes which consume a minimal quantity of water and

(a) such purposes are not listed in the application, permit or license, or

(b) the reservoir is not described as a place of use, or

(c) the reservoir covers land not included in the described place of use, then no petition need be filed to correct such an omission, provided that the board finds that no person would be adversely affected by such corrections. The board may make such corrections at any time such omissions are discovered.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 1700, 1701 AND 1702, WATER CODE.

HISTORY

1. Renumbering and amendment of Section 744 to Section 798 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 67, No. 49.

§ 799. Petition for Change to Add a Power Plant to Existing Works.

(a) Persons having a permit or license for the use of water may petition the board to add generation of power to the permit or license as a beneficial use when the water can be used for the generation of power without changing the streamflow regime. The criteria that shall be considered in determining whether there would be a change in the streamflow regime include, but are not limited to, the following: (1) Will the rate and volume of flow be changed? (2) Will the water temperature be changed? (3) Will there be changes in the concentration of dissolved oxygen or turbidity? (4) Will there be changes in the timing of water releases from any existing water diversion or storage facility? (5) Will there be a change in the point of discharge or will any additional section of watercourse be bypassed?

(b) See Section 730 concerning when a new application must be filed.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 106.7, 110, 1250.5, 1381, 1394, 1396, 1397, 1490, 1491, 1611, 1700, 1701, 1702, 1703, 1704, 1704.1, 1704.2, 1704.3, 1704.4, 1705, 1705.5 AND 1706, WATER CODE.

HISTORY

1. New section filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

2. Amendment filed 12-13-93; operative 1-12-94 (Register 93, No. 51).

Article 16. Temporary Changes Due to Transfer or Exchange of Water or Water Rights

§ 800. Temporary Changes.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 1726 AND 1727, WATER CODE.

History

1. *New article 23 (sections 800 through 803) filed 10-25-65; effective thirtieth day thereafter (Register 65, No. 20).*
2. *Amendment of subsection (c) filed 3-3-78 as procedural and organizational; effective upon filing (Register 78, No. 9).*
3. *Renumbering and amendment of former section 800 to section 736, and new section 800 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).*
4. *Amendment of article heading and repealer of section filed 12-13-93; operative 1-12-94 (Register 93, No. 51).*

§ 801. Notice of Temporary Change.

The petition for temporary change submitted by the water right holder under Water Code Section 1726 shall include the information required by Section 794.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: SECTION 1726, WATER CODE.

History

1. *Renumbering and amendment of former section 801 to section 737, and new section 801 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 65, No. 20.*
2. *Amendment filed 12-13-93; operative 1-12-94 (Register 93, No. 51).*

§ 802. Map Requirements.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: SECTION 1726, WATER CODE.

History

1. *Renumbering and amendment of former section 802 to section 738, and new section 802 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 65, No. 20.*
2. *Repealer filed 12-13-93; operative 1-12-94 (Register 93, No. 51).*

§ 803. Action by the Board Regarding Temporary Changes.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: SECTIONS 1725 AND 1727, WATER CODE.

History

1. *Renumbering and amendment of former section 803 to section 739, and new section 803 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 65, No. 20.*
2. *Repealer filed 12-13-93; operative 1-12-94 (Register 93, No. 51).*

§ 804. Public Notice and Objections to Proposed Temporary Changes.

(a) Within ten days after the receipt of a petition meeting the requirements of Section 801, the board will send notice of the petition or contact all legal users of water known to the board who may be affected by the proposed temporary change(s).

(b) Any interested person may file an objection to the proposed change(s) with the board not later than 15 days after the date of the notice required by subsection (a). The objection shall indicate the manner in which service upon the applicant of a duplicate copy of the protest has been made.

(c) The board shall give prompt consideration to any objection, and may hold a hearing thereon, after notice to all interested persons known to the board.

(d) Notice of hearing on a proposed temporary change may be given by mailing notice to the water right holder, the Department of Fish and Game and persons known to the board who might be affected by the proposed change, not less than 20 days before the date of hearing by certified mail or personal delivery.

(e) Any order approving a temporary change under this Article shall meet the requirements of section 792(c).

NOTE: AUTHORITY CITED: SECTIONS 1058, 1438(A) AND 1726, WATER CODE.

REFERENCE: SECTIONS 1725, 1726 AND 1727, WATER CODE.

HISTORY

1. New section filed 12-13-93; operative 1-12-94 (Register 93, No. 51).

Article 16.5. Temporary Urgency Changes

§ 805. Petition for Temporary Urgency Change.

(a) A petition for a temporary urgency change will not be accepted for filing until the minimum fee required by Water Code Section 1436 is received and the applicable information specified by Section 794 has been submitted to the board.

(b) Prior to issuance of any temporary urgency change order pursuant to Water Code Section 1435, there shall be compliance with any applicable requirements of Division 13 (commencing with Section 21000) of the Public Resources Code, payment of any additional fees, and submittal to the board of any additional information or maps necessary to make the findings required by Water Code Section 1435.

NOTE: AUTHORITY CITED: SECTIONS 1058, 1436 AND 1438(A), WATER CODE.

REFERENCE: SECTIONS 1435, 1436 AND 1437, WATER CODE.

HISTORY

1. New article 16.5 and section filed 12-13-93; operative 1-12-94 (Register 93, No. 51).

§ 806. Notification of and Objections to Temporary Urgency Changes.

(a) As soon as practicable after receipt of a petition meeting the information and map requirements of Section 794 and compliance with Water Code Section 1437 the board shall cause notice to be given pursuant to Water Code Sections 1438(b) and 1438(c).

(b) Any interested person may file an objection to the petition with the board prior to adoption of a board order or validation of any temporary urgency change order. The objection shall indicate the manner in which service upon the applicant of a duplicate copy of the protest has been made.

(c) Any objections to a temporary urgency change petition will be heard by the board during its validation meeting or at a hearing after notice to all interested persons known to the board.

NOTE: AUTHORITY CITED: SECTIONS 1058, 1436 AND 1438(A), WATER CODE.

REFERENCE: SECTIONS 1435, 1437 AND 1438, WATER CODE.

HISTORY

1. New section filed 12-13-93; operative 1-12-94 (Register 93, No. 51).

Article 17. Changes Involving a Long-Term Transfer of Water or Water Right

§ 811. Long Term Transfer.

(a) A permittee, licensee, or holder of a water right determined under a court decree issued pursuant to Water Code Section 2500 et seq. after January 1, 1981 who is filing a petition pursuant to Water Code Section 1740, may petition the board for a long-term transfer of water or water rights involving change(s) in point of diversion, place of use, or purpose of use specified in the permit, license, or water right for any period of time in excess of one year.

(b) Any long-term transfer requested under Water Code Section 1735 shall be subject to the applicable requirements of Articles 15 and 16 and any applicable requirements of Division 13 (commencing with Section 21000) of the Public Resources Code.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTION 1735, 1736 AND 1740, WATER CODE.

HISTORY

1. New section filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

2. Amendment of article heading, section and Note filed 12-13-93; operative 1-12-94 (Register 93, No. 51).

§ 812. Petition for Long-term Transfer.

A petition for a long-term transfer of water or water rights will not be accepted for filing unless it is accompanied by the filing fee required by chapter 5 (commencing with section 1061) of this division and the information and maps specified in Section 794 have been submitted to the board. The board may cancel a petition for failure to pay any annual fee for the petition when due.

NOTE: AUTHORITY CITED: SECTIONS 1058 AND 1530, WATER CODE.

REFERENCE: SECTIONS 1525, 1735, 1736 AND 1740, WATER CODE.

HISTORY

1. New section filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

2. Amendment of section heading, text and Note filed 12-13-93; operative 1-12-94 (Register 93, No. 51).

3. Amendment of section and Note filed 12-23-2003 as an emergency; operative 1-1-2004 (Register 2003, No. 52). Pursuant to Water Code section 1530 this rulemaking action remains in effect until revised by the State Water Resources Control Board.

§ 813. Map Requirements.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: SECTION 1735, WATER CODE.

HISTORY

1. New section filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

2. Repealer filed 12-13-93; operative 1-12-94 (Register 93, No. 51).

§ 814. Notice of Long-term Petitions.

After a completed petition has been filed for a long-term transfer of water or water rights involving a change in point of diversion, place of use or purpose of use, the board shall give notice to the Department of Fish and Game, all persons requesting notice of change petitions, and all legal users of water known to the board who may be affected by the proposed change. A hearing will be held upon request of the petitioner or a protestant.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: SECTIONS 1736 AND 1740, WATER CODE.

HISTORY

1. New section filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

2. Amendment of section heading, text and Note filed 12-13-93; operative 1-12-94 (Register 93, No. 51).

§ 815. Protest Procedure on Long-term Transfer Petitions.

The provisions of Article 9, 10 and 11 insofar as they are applicable, shall govern protests, answers, investigations, and hearings of petitions under this Article.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: SECTIONS 1735, 1736 AND 1740, WATER CODE.

HISTORY

1. New section filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

2. Amendment of section heading, text and Note filed 12-13-93; operative 1-12-94 (Register 93, No. 51).

§ 816. Action of the Board Regarding Long-term Transfers.

If the board determines that a long-term transfer of water or water rights as described in Section 811 is appropriate, and meets the requirements of Water Code Section 1736, an order will be issued in accordance with Section 792 authorizing the long-term transfer, subject to appropriate terms and conditions

for the period requested or such lesser period found by the board to be appropriate.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 1735, 1736 AND 1740, WATER CODE.

HISTORY

1. New section filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

2. Amendment of section heading, text and Note filed 12-13-93; operative 1-12-94 (Register 93, No. 51).

Article 18. Enforcement of Terms and Conditions

§ 820. Complaints of Violations.

Any person affected by a violation of any term or condition of a permit or license may file a complaint with the board. The complaint shall contain the following:

(a) Name and address of the complainant.

(b) The nature and location of the alleged violation.

(c) The manner in which the complainant was affected.

(d) A statement of whether complainant is required by Part 5.1 (commencing with Section 5100) of Division 2 of the Water Code to file with the board a statement of his water diversion and use, and if complainant is so required, a statement:

(1) That complainant has filed with the board a statement of water diversion and use; or

(2) Setting forth the reason for complainant's failure to file such a statement of water diversion and use.

(e) The specific action which complainant requests.

Any person may complain of a violation of a condition intended for the benefit of the public.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 1391, 1393 AND 1394, WATER CODE.

HISTORY

1. Renumbering and amendment of Section to Section filed 1 -16-87; effective thirtieth day thereafter (Register 87, No. 10).

§ 821. Investigation of Complaints.

If, after investigation, the board's staff finds that a violation of the terms and conditions of a permit or license has occurred which might be cause for enforcement action by the board, the matter may be referred to the board for hearing in accordance with the provisions of Water Code Sections 1410 et seq., 1675 et seq. or 1825 et seq. If the board's staff finds that no such violation has occurred, the complainant will be notified and no further action will be taken unless the complainant requests a hearing, in which event the board will

determine whether to hold a hearing based on information supplied by the complainant and the staff.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 1051, 1391, 1393, 1394, 1610 AND 1611, WATER CODE.

HISTORY

1. Renumbering and amendment of Section 764.5 to Section 821 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 74, No. 4.

2. Editorial correction amending section (Register 2005, No. 17).

§ 822. Action by the Board.

After notice in accordance with Water Code Sections 1410 and 1410.1, 1675 and 1675.1, or 1831 and 1834 and hearing if a hearing is requested, if the board finds that a violation has occurred, it may revoke the permit or license or take such other action as appears appropriate under the circumstances.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 1391 AND 1611, WATER CODE.

HISTORY

1. Renumbering and amendment of Section 764.6 to Section 822 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 74, No. 4.

§ 823. Action on the Board's Own Motion.

The board may on its own motion investigate possible violations of permit or license terms or conditions and proceed in accordance with Section 822.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 1051, 1391, 1393, 1394, 1610 AND 1611, WATER CODE.

HISTORY

1. Renumbering and amendment of Section 764.7 to Section 823 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 74, No. 4.

Article 19. Changes of Ownership and of Address-Notices

§ 830. Procedure on Change of Address.

Parties interested in applications, permits, and licenses shall promptly advise the board of changes of address. Whenever a notice is required by law or these regulations to be sent to a party, such notice will be mailed to the party at the most recent address supplied to the board by or on behalf of such party unless a different procedure is expressly required by law.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 1250, 1302, 1303, 1304, 1320, 1321 AND 1322, WATER CODE.

HISTORY

1. Renumbering and amendment of Section 765 to Section 830 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 60, No. 5.

§ 831. Notice to Board of Changes in Ownership.

When rights under an application, permit, or license are transferred, a statement to that effect, signed by the previous owner, shall be filed immediately with the board, referring to the number of the application and stating the name and address of the new owner. Thereafter, notices and correspondence concerning the application, permit, or license will be sent to the new owner designated in such statement.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: SECTIONS 1250 AND 1252, WATER CODE.

HISTORY

1. Renumbering and amendment of Section 766 to Section 831 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 60, No. 5.

§ 832. Contests As to Ownership.

The board will not undertake to determine contests as to ownership of rights initiated by applications to appropriate water. The board will ordinarily accept any claim asserted to ownership of an application, permit or license unless the record title holder, or an asserted successor in interest, objects. When a contest develops as to ownership the board will not ordinarily change its record until the matter is either determined by a court or adjusted to the mutual satisfaction of the parties, unless evidence of continued occupation, use, or control justifies a different course.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: SECTIONS 1250 AND 1252, WATER CODE.

HISTORY

1. Renumbering and amendment of Section 767 to Section 832 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 60, No. 5.

§ 833. Presumption Based on Ownership of Place of Use.

When an application, permit, or license stands upon the records of the board in the name of the owner of the place of use the right will be considered appurtenant to the land unless there is evidence to the contrary. It will generally be presumed that the water right passes with a transfer of the land unless expressly excepted.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: SECTIONS 1250 AND 1252, WATER CODE.

HISTORY

1. Renumbering and amendment of Section 769 to Section 833 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 60, No. 5.

§ 834. Presumption That Water Right Passes upon Foreclosure Sale.

It will be presumed that a water right, upon a foreclosure sale of the land where the water is used, passes with the land whether the water right was

initiated before or after the lien was established, unless there is a showing that the water right is not appurtenance or incident to the real property.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 1250 AND 1252, WATER CODE.

HISTORY

1. Renumbering and amendment of Section 770 to Section 834 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 60, No. 5.

§ 835. Presumption upon Termination of an Option or Lease Relative to Real Property.

In the case of an option to purchase or a lease of land, it will be presumed, unless there is a showing to the contrary, that any water right initiated by the optionee or the lessee is personal and that such water right does not belong to the owner of the real property where use of the water is made, upon forfeiture, abandonment, or expiration of the option or lease.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 1250 AND 1252, WATER CODE.

HISTORY

1. Renumbering and amendment of Section 771 to Section 835 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 60, No. 5.

§ 836. Issuance of Separate Permits and Licenses.

(a) When the place of use described in an application, permit, or license is divided into two or more ownerships and each of the owners succeeds to a separate interest in the application, permit or license, the board may issue separate permits or licenses covering the interest held by each owner. The separate permits or licenses shall replace any existing permit or license previously issued for the same use and shall contain the same terms to the extent they are applicable. The existing permit or license will then be revoked. The priority of the rights will not be affected and each of the permits or licenses will bear the same number as the replaced instrument plus a distinguishing letter designation.

(b) Issuance of separate permits and licenses in accordance with subsection (a) shall not be construed as a determination by the board that the water right has necessarily been fully maintained by continuous beneficial use and by observance of the law and provisions of the permit or license.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 1250, 1380 AND 1382 AND 1610, WATER CODE.

HISTORY

1. Renumbering and amendment of Section 722 to Section 836 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 67, No. 49.

Article 20. Diligence Required -Extensions of Time

§ 840. Reasonable Promptness Required.

An application will be denied when it appears after hearing or a proceeding in lieu of hearing that (a) the applicant does not intend to initiate construction of the works required for the contemplated use of water within a reasonable time and thereafter diligently prosecute the construction and use of water to completion, or (b) the applicant will not be able to proceed within a reasonable time, either because of absence of a feasible plan, lack of the required financial resources, or other cause.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTION 1255, WATER CODE.

HISTORY

1. Renumbering and amendment of Section 776 to Section 840 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 4, No. 6.

2. Editorial correction amending section (Register 2005, No. 17).

§ 841. Time for Completion.

In determining the period of time to be allowed to build diversion works and apply the water to full beneficial use, the particular conditions surrounding each case will govern. In every case the matter must be pressed with due diligence considering the size of the project and the obstacles to be overcome.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 1250, 1252 AND 1260, WATER CODE.

HISTORY

1. Renumbering and amendment of Section 777 to Section 841 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 60, No. 5.

§ 842. Requests for Extension of Time Under Permits.

A request for extension of time within which to commence or complete construction work or apply the water to full beneficial use may be submitted upon forms supplied by the board. A request for extension of time will not be accepted for filing unless it is accompanied by the filing fee required by chapter 5 (commencing with section 1061) of this division. The board may cancel a request for extension of time for failure to pay any annual fee for the request when due.

NOTE: AUTHORITY CITED: SECTIONS 1058 AND 1530, WATER CODE.

REFERENCE: SECTIONS 1250, 1252, 1398 AND 1525, WATER CODE.

HISTORY

1. Renumbering and amendment of Section 778 to Section 842 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 60, No. 5.

2. Amendment of section and Note filed 12-23-2003 as an emergency; operative 1-1-2004 (Register 2003, No. 52). Pursuant to Water Code section 1530 this rulemaking action remains in effect until revised by the State Water Resources Control Board.

§ 843. Notice of Petitions and Protests.

(a) After filing a petition for an extension of time under a permit, the petitioner, in case the board so requires, shall cause notice thereof to be given or published in such manner as may be prescribed by the board.

(1) The board will not ordinarily require that the petitioner cause notice to be given or published where the permitted project meets each of the following criteria:

(A) Construction of the project has commenced or a substantial financial commitment for construction or for land acquisition has been undertaken; and

(B) the project is not in an area where there is unusual competition for or interest in water; and

(C) the project is not a large multi-stage project which may be behind schedule.

(b) At any time any person may request in writing special notice of the filing of petitions for extension of time. Thereafter the board shall mail a copy of each such notice to such person, together with a statement of the time within which any protest must be filed.

(c) Protests to a petition may be filed within the time fixed by the board, which shall be stated in the notice, or such further time as the board may, for good cause, allow. Protests shall be submitted in writing with a copy to the petitioner and shall include the following information:

(1) The name and address of the protestant.

(2) The reasons for protestant's objection to the petition and any conditions on which the objection could be satisfied.

(3) If protestant claims a right to the use of water affected by the permit, the basis of the claim and protestant's use of water shall be described.

The board may require such other information as it deems necessary to resolve the issues, with or without a hearing.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 1250, 1300, 1320, 1330, 1331, 1398 AND 1546, WATER CODE.

HISTORY

1. Renumbering and amendment of Section 778.5 to Section 843 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 76, No. 5.

2. Editorial correction amending section (Register 2005, No. 17).

§ 844. Cause for Extension of Time.

An extension of time within which to complete an application, to commence or complete construction work or apply water to full beneficial use will be granted only upon such conditions as the board determines to be in the

public interest and upon a showing to the board's satisfaction that due diligence has been exercised, that failure to comply with previous time requirements has been occasioned by obstacles which could not reasonably be avoided, and that satisfactory progress will be made if an extension of time is granted. Lack of finances, occupation with other work, physical disability, and other conditions incident to the person and not to the enterprise will not generally be accepted as good cause for delay. The board may, in its discretion, require a hearing upon notice to the permittee and such other parties as the board may prescribe.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTION 2, ARTICLE X, CALIFORNIA CONSTITUTION; SECTIONS 100, 104, 105, 275, 1250, 1253, 1255, 1257, 1394, 1395, 1396, 1397, 1398, 1410, 1546, 1675, WATER CODE; SECTIONS 21000, 21065 AND 21081, PUBLIC RESOURCES CODE; JOHNSON RANCHO COUNTY WATER DISTRICT V. STATE WATER RIGHTS BOARD, 235 CAL.APP.2D 863, 45 CAL.RPTR. 589 (1965); AND NATIONAL AUDUBON SOCIETY V. SUPERIOR COURT OF ALPINE COUNTY, 33 CAL.3D 419, 189 CAL.RPTR. 345, 658 P.2D 709 (1983).

HISTORY

1. Renumbering and amendment of Section 779 to Section 844 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 72, No. 27.

§ 845. Withholding Issuance of Permit.

(a) When approval of an application will be conditional upon the applicant undertaking certain measures, issuance of the permit shall be withheld until the applicant has notified the board that the conditions have been met.

(b) The board may cancel any application and refuse to issue a permit if the applicant fails to comply with the conditions or to notify the board of his compliance within a reasonable time. The board first gives the applicant written notice of the proposed action and 30 days in which to comply and to notify the board of compliance or to request a hearing.

(c) After a permit is issued subject to continual compliance with one or more specified conditions, permittee shall certify under penalty of perjury at such intervals as specified in the permit or as the board may specify that each condition is being met. If permittee fails to so certify or if it is discovered that permittee is not complying with a specified condition, the board may revoke the permit, provided the board gives the permittee written notice of such possible revocation and 30 days in which to comply and to notify the board of his compliance or to request a hearing.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 1250, 1255, 1391, 1393, 1394, 1395, 1396, 1397, 1398, 1410 AND 1412, WATER CODE.

History

1. Renumbering and amendment of Section 781 to Section 845 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 73, No. 34.

§ 846. Measuring Devices and Statements.

After issuance of a permit for surface diversion or storage or underground storage the permittee may be required to establish suitable measuring and recording devices and to obtain and furnish to the board such records as may be needed to determine with reasonable accuracy:

the quantity of water beneficially used; or

the quantity of water placed in storage and the quantity later recovered under the provisions of the permit. Permittee may also be required to determine and submit a written statement of the quantities beneficially used.

Note: Authority cited: Section 1058, Water Code.

Reference: Section 2, Article X, California Constitution; and Sections 100, 275 and 1240, Water Code.

History

1. Renumbering and amendment of Sections 785 and 786 to Section 846 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 60, No. 5.

§ 847. Progress Report.

Prior to issuance of license, annual progress reports shall be filed promptly by permittee upon forms provided by the board. After the issuance of license, reports shall be made when requested by the board upon the forms provided.

Note: Authority cited: Section 1058, Water Code.

Reference: Sections 1395, 1396 and 1397, Water Code.

History

1. Renumbering and amendment of Section 782 to Section 847 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 60, No. 5.

§ 848. Contents.

(a) In addition to such other information as may be required, all reports shall contain permittee's or licensee's evaluation of the current potential for using reclaimed water or reusing water to satisfy all or part of the water needed.

(b) If the terms of the permit or license require water conservation measures, the extent of implementation of such measures shall be reported.

Note: Authority cited: Section 1058, Water Code.

Reference: Section 275, Water Code; and Section 2, Article X, California Constitution.

History

1. Renumbering and amendment of Section 783 to Section 848 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 77, No. 5.

Article 21. Revocation of Permits and Licenses

§ 850. Revocation Hearings.

When it appears to the board that a permittee may have failed to commence or complete construction work or beneficial use of water with due diligence in accordance with terms of the permit, the regulations of the board and the law, or that a permittee or licensee may have ceased beneficial use of water, or that he may have failed to observe any of the terms or conditions of the permit or license, the board may consider revocation of the permit or license. The board will notify the permittee or licensee of the proposed revocation. The notice will state the reasons for the proposed revocation and provide an opportunity for hearing upon request of the permittee or licensee. In the case of a permit, a request for extension of time may also be considered at such hearing. Nothing in this section shall be construed as limiting the board's authority to take action pursuant to Water Code Section 1831.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 1410 AND 1411, WATER CODE.

HISTORY

1. Renumbering and amendment of Section 790 to Section 850 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 60, No. 5.

2. Editorial correction amending section (Register 2005, No. 17).

§ 851. Notice of Hearing.

At least 10 days prior to hearing, a notice specifying the time, place, and purpose of such hearing and grounds for possible revocation shall be sent by registered or certified mail to the permittee or licensee. The notice shall constitute a sufficient statement of the issues to be heard.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTION 1410, WATER CODE.

HISTORY

1. Renumbering and amendment of Section 791 to Section 851 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 60, No. 5.

§ 852. Procedure Relating to Hearings.

The provisions of Chapter 1.5, Article 2 of this subchapter insofar as they are applicable shall govern hearings under this article.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 1410, 1411, 1412, 1413, 1414 AND 1415, WATER CODE.

HISTORY

1. Renumbering and amendment of Section 792 to Section 852 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 60, No. 5.

2. Change without regulatory effect amending section filed 4-6-2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 14).

Article 22. Prevention of Waste and Unreasonable Use

§ 855. Policy and Definition.

(a) In investigating any uses of water and making the determinations required by this article, the board shall give particular consideration to the reasonableness of use of reclaimed water or reuse of water.

(b) As used in this article, "misuse of water" or "misuse" means any waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 100, 275, 1240, 1251, 1253 AND 1257, WATER CODE; AND SECTION 2, ARTICLE X, CALIFORNIA CONSTITUTION.

HISTORY

1. Renumbering and amendment of Section 764.9 to Section 855 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 77, No. 5.

§ 856. Investigations.

The board staff shall investigate an allegation of misuse of water:

(1) when an interested person shows good cause, or

(2) when the board itself believes that a misuse may exists.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 100, 183, 275 AND 1051, WATER CODE; AND SECTION 2, ARTICLE X, CALIFORNIA CONSTITUTION.

HISTORY

1. Renumbering and amendment of Section 764.10 to Section 856 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 77, No. 26.

§ 857. Notifications, Hearings and Orders.

(a) If the investigation indicates that a misuse of water has occurred, the board staff shall notify interested persons and allow a reasonable period of time in which to terminate such misuse or demonstrate to the satisfaction of the board staff that misuse has not occurred.

(b) At the end of the time set by the board staff, and upon application of any interested person or upon its own motion, the board may hold a hearing to determine if misuse has occurred or continues to occur.

(c) If the misuse is alleged to have occurred or to continue to occur in connection with exercise of rights evidenced by a permit or license issued by the board, the board shall notice the hearing as a permit revocation hearing pursuant to Water Code Section 1410.1, or as a license revocation hearing pursuant to Water Code Section 1675.1, as appropriate; or as a preliminary cease and desist order hearing pursuant to Water Code Section 1834.

(d) The board may issue an order requiring prevention or termination thereof.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 100, 275, 183, 1051, 1401, 1675.1 AND 1834, WATER CODE.

HISTORY

1. Renumbering and amendment of Section 764.11 to Section 857 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 77, No. 26.

§ 858. Noncompliance with Order Regarding Misuse Under Water Right Entitlement.

If a permittee or licensee does not comply with any order issued pursuant to Section 857 within such reasonable period of time as allowed by the board, or such extension thereof as may for good cause be allowed by the board, and if such order includes a finding that waste, unreasonable use, method of use, or method of diversion has occurred in connection with exercise of a right evidenced by a permit or license issued by the board, a revocation action may be commenced by the board:

(a) If the hearing has been noticed as a permit or license revocation hearing, and if the board finds that misuse has occurred or continues to occur, the board may order the permit or license revoked or impose appropriate additional or amended terms or conditions on the entitlement to prevent recurrence of the misuse;

(b) If the hearing pursuant to Section 857 has been noticed as a preliminary cease and desist order hearing, and if the board finds that misuse has occurred or continues to occur, the board may issue a preliminary cease and desist order.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 1410, 1675 AND 1831, WATER CODE.

HISTORY

1. Renumbering and amendment of Section 764.12 to Section 858 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 77, No. 26.

§ 859. Noncompliance with Other Order.

If a person other than a permittee or licensee does not comply with any order issued pursuant to Section 857 within such reasonable period of time as allowed by the board, or such extension thereof as may for good cause be allowed, and if such order includes a finding that such person has misused or continues to misuse water, the board may request appropriate legal action by the Attorney General.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTION 275, WATER CODE.

History

1. Renumbering and amendment of Section 764.13 to Section 859 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 77, No. 26.

§ 860. Alternative Procedure.

The procedure established in this article shall be construed as alternative to, and not exclusive of, the procedures established in Chapter 5 of Title 23, California Administrative Code, in accordance with Section 4007 therein.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTION 275, WATER CODE.

History

1. Renumbering and amendment of Section 764.14 to Section 860 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 79, No. 27.

§ 862. Russian River, Special.

Budding grape vines and certain other crops in the Russian River watershed may be severely damaged by spring frosts. Frost protection of crops is a beneficial use of water under section 671 of this chapter. During a frost, however, the high instantaneous demand for water for frost protection by numerous vineyardists and other water users may contribute to a rapid decrease in stream stage that results in the mortality of salmonids due to stranding. Stranding mortality can be avoided by coordinating or otherwise managing diversions to reduce instantaneous demand. Because a reasonable alternative to current practices exists, the Board has determined these diversions must be conducted in accordance with this section.

(a) After March 14, 2012, except for diversion upstream of Warm Springs Dam in Sonoma County or Coyote Dam in Mendocino County, any diversion of water from the Russian River stream system, including the pumping of hydraulically connected groundwater, for purposes of frost protection from March 15 through May 15, shall be diverted in accordance with a board approved water demand management program (WDMP). For purposes of this section, groundwater pumped within the Russian River watershed is considered hydraulically connected to the Russian River stream system if that pumping contributes to a reduction in stream stage to any surface stream in the Russian River watershed during any single frost event.

(b) The purpose of the WDMP is to assess the extent to which diversions for frost protection affect stream stage and manage diversions to prevent cumulative diversions for frost protection from causing a reduction in stream stage that causes stranding mortality. The WDMP, and any revisions thereto, shall be administered by an individual or governing body (governing body) capable of ensuring that the requirements of the program are met. Any WDMP

developed pursuant to this section shall be submitted to the board by February 1 prior to the frost season.

(c) At a minimum, the WDMP shall include (1) an inventory of the frost diversion systems within the area subject to the WDMP, (2) a stream stage monitoring program, (3) an assessment of the potential risk of stranding mortality due to frost diversions, (4) the identification and timelines for implementation of any corrective actions necessary to prevent stranding mortality caused by frost diversions, and (5) annual reporting of program data, activities, and results. In addition, the WDMP shall identify the diverters participating in the program and any known diverters within the area subject to the WDMP who declined to participate. The WDMP also shall include a schedule for conducting the frost inventory, developing and implementing the stream stage monitoring program, and conducting the risk assessment.

(1) Inventory of frost diversion systems: The governing body shall establish an inventory of all frost diversions included in the WDMP. The inventory, except for diversion data, shall be completed within three months after board approval of a WDMP. The inventory shall be updated annually with any changes to the inventory and with frost diversion data. The inventory shall include for each frost diversion:

(A) Name of the diverter;

(B) Source of water used and location of diversion;

(C) A description of the diversion system and its capacity;

(D) Acreage frost protected and acres frost protected by means other than water diverted from the Russian River stream system; and

(E) The rate of diversion, hours of operation, and volume of water diverted during each frost event for the year.

(2) Stream stage monitoring program: The governing body shall develop a stream stage monitoring program in consultation with National Marine Fisheries Service (NMFS) and California Department of Fish and Game (DFG). For the purposes of this section, consultation involves an open exchange of information for the purposes of obtaining recommendations. The governing body is authorized to include its own expert scientists and engineers in the consultation, and request board staff to participate, when desired. The stream stage monitoring program shall include the following:

(A) A determination of the number, type, and location of stream gages necessary for the WDMP to monitor and assess the extent to which frost diversions may affect stream stage and cause stranding mortality;

(B) A determination of the stream stage that should be maintained at each page to prevent stranding mortality;

(C) Provisions for the installation and ongoing calibration and maintenance of stream gages; and

(D) Monitoring and recording of stream stage at intervals not to exceed 15 minutes.

(3) Risk assessment: Based on the inventory and stream stage information described above, and information regarding the presence of habitat for salmonids, the governing body shall conduct a risk assessment that evaluates the potential for frost diversions to cause stranding mortality. The risk assessment shall be conducted in consultation with NMFS and DFG. The governing body is authorized to include its own expert scientists and engineers in the consultation, and request board staff to participate, when desired. The risk assessment shall be evaluated and updated annually.

(4) Corrective Actions: If the governing body determines that diversions for purposes of frost protection have the potential to cause stranding mortality, the governing body shall notify the diverter(s) of the potential risk. The governing body, in consultation with the diverters, shall develop a corrective action plan that will prevent stranding mortality. Corrective actions may include alternative methods for frost protection, best management practices, better coordination of diversions, construction of offstream storage facilities, real-time stream gage and diversion monitoring, or other alternative methods of diversion. Corrective actions also may include revisions to the number, location and type of stream stage monitoring pages, or to the stream stages considered necessary to prevent stranding mortality. In developing the corrective action plan the governing body shall consider the relative water right priorities of the diverters and any time delay between groundwater diversions and a reduction in stream stage. The corrective action plan shall include a schedule of implementation. To the extent feasible, the corrective action plan shall include interim corrective actions if long-term corrective actions are anticipated to take over three years to fully implement. The diverters shall implement corrective actions in accordance with the corrective action plan, or cease diverting water for frost protection.

(5) Annual Reporting: The governing body shall submit a publically available annual report of program operations, risk assessment, and corrective actions by September 1 following the frost season that is the subject of the report. The report shall include:

(A) The frost inventory, including diversion data.

(B) Stream stage monitoring data.

(C) The risk assessment and its results, identification of the need for any additional data or analysis, and a schedule for obtaining the data or completing the analysis.

(D) A description of any corrective action plan that has been developed, any corrective actions implemented to date, and a schedule for implementing any additional corrective actions.

(E) Any instances of noncompliance with the WDMP or with a corrective action plan, including the failure to implement identified corrective actions. The

report shall document consultations with DFG and NMFS regarding the stream stage monitoring program and risk assessment and shall explain any deviations from recommendations made by DFG or NMFS during the consultation process. In addition, the annual report shall evaluate the effectiveness of the WDMP and recommend any necessary changes to the WDMP, including any proposed additions or subtractions of program participants. Any recommendations for revisions to the WDMP shall include a program implementation plan and schedule. The board may require changes to the WDMP, including but not limited to the risk assessment, corrective action plan, and schedule of implementation, at any time.

(d) The governing body may develop and submit for the Deputy Director for Water Rights' approval, criteria, applicable to any participant in its WDMP, for identifying groundwater diversions that are not hydraulically connected to the Russian River stream system. The governing body may submit to the Deputy Director a list of groundwater diverters that appear to meet these criteria and could be exempted from this section. The Deputy Director is authorized to exempt the listed groundwater diverters, or identify the reason for not exempting the listed groundwater diverters. Beginning three years from the effective date of this section, if an individual groundwater diverter can independently demonstrate to the satisfaction of the Deputy Director that the diversion is not hydraulically connected to the Russian River stream system, the Deputy Director is authorized to exempt the groundwater diverter from this section.

(e) Compliance with this section shall constitute a condition of all water right permits and licenses that authorize the diversion of water from the Russian River stream system for purposes of frost protection. The diversion of water in violation of this section, including the failure to implement the corrective actions included in any corrective action plan developed by the governing body, is an unreasonable method of diversion and use and a violation of Water Code section 100, and shall be subject to enforcement by the board. The board has continuing authority to revise terms and conditions of all permits and licenses that authorize the diversion of water for purposes of frost protection should future conditions warrant.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTION 2, ARTICLE X, CALIFORNIA CONSTITUTION; AND SECTIONS 100, 275 AND 1051.5, WATER CODE.

HISTORY

1. New section filed 12-29-2011; operative 12-29-2011 pursuant to Government Code section 11343.4 (Register 2011, No. 52).

Article 22.5. Drought Emergency Water Conservation

§ 863. Findings of Drought Emergency.

(a) The State Water Resources Control Board finds as follows:

(1) On January 17, 2014, the Governor issued a proclamation of a state of emergency under the California Emergency Services Act based on drought conditions;

(2) On April 25, 2014, the Governor issued a proclamation of a continued state of emergency under the California Emergency Services Act based on continued drought conditions;

(3) On April 1, 2015, the Governor issued an Executive Order that, in part, directs the State Board to impose restrictions on water suppliers to achieve a statewide 25 percent reduction in potable urban usage through February, 2016; require commercial, industrial, and institutional users to implement water efficiency measures; prohibit irrigation with potable water of ornamental turf in public street medians; and prohibit irrigation with potable water outside newly constructed homes and buildings that is not delivered by drip or microspray systems;

(4) On November 13, 2015, the Governor issued an Executive Order that directs the State Board to, if drought conditions persist through January 2016, extend until October 31, 2016 restrictions to achieve a statewide reduction in potable usage;

(5) The drought conditions that formed the basis of the Governor's emergency proclamations continue to exist; and

(6) The drought conditions will likely continue for the foreseeable future and additional action by both the State Water Resources Control Board and local water suppliers will likely be necessary to prevent waste and unreasonable use of water and to further promote conservation.

NOTE: AUTHORITY CITED: SECTION 1058.5, WATER CODE.

REFERENCE: ARTICLE X, SECTION 2, CALIFORNIA CONSTITUTION; SECTIONS 102, 104, 105 AND 275, WATER CODE; AND LIGHT V. STATE WATER RESOURCES CONTROL BOARD (2014) 226 CAL.APP.4TH 1463.

HISTORY

1. *New article 22.5 (sections 863-865) and section filed 7-28-2014 as an emergency; operative 7-28-2014 (Register 2014, No. 31). The finding of emergency was exempt from OAL review pursuant to Water Code section 1058.5(b). Pursuant to Water Code section 1058.5(c), a Certificate of Compliance must be transmitted to OAL by 4-24-2015 or emergency language will be repealed by operation of law on the following day.*
2. *New article 22.5 (sections 863-865) and section refiled 3-27-2015 as an emergency; operative 3-27-2015 (Register 2015, No. 13). Pursuant to Water Code section 1058.5(c), a Certificate of Compliance must be transmitted to OAL by 12-22-2015 or emergency language will be repealed by operation of law on the following day.*

3. New article 22.5 (sections 863-866) and section refiled (with further amendments to section and Note) 5-18-2015 as an emergency; operative 5-18-2015 (Register 2015, No. 21). The finding of emergency was exempt from OAL review pursuant to Water Code section 1058.5(b). Pursuant to Water Code section 1058.5(c), a Certificate of Compliance must be transmitted to OAL by 2-12-2016 or emergency language will be repealed by operation of law on the following day.

4. New article 22.5 (sections 863-866) and section refiled with further amendments 2-11-2016 as an emergency; operative 2-11-2016 (Register 2016, No. 7). The finding of emergency was exempt from OAL review pursuant to Water Code section 1058.5(b). Pursuant to Water Code section 1058.5(c), a Certificate of Compliance must be transmitted to OAL by 11-7-2016 or emergency language will be repealed by operation of law on the following day.

§ 864. End-User Requirements in Promotion of Water Conservation.

(a) To prevent the waste and unreasonable use of water and to promote water conservation, each of the following actions is prohibited, except where necessary to address an immediate health and safety need or to comply with a term or condition in a permit issued by a state or federal agency:

(1) The application of potable water to outdoor landscapes in a manner that causes runoff such that water flows onto adjacent property, non-irrigated areas, private and public walkways, roadways, parking lots, or structures;

(2) The use of a hose that dispenses potable water to wash a motor vehicle, except where the hose is fitted with a shut-off nozzle or device attached to it that causes it to cease dispensing water immediately when not in use;

(3) The application of potable water to driveways and sidewalks;

(4) The use of potable water in a fountain or other decorative water feature, except where the water is part of a recirculating system;

(5) The application of potable water to outdoor landscapes during and within 48 hours after measurable rainfall;

(6) The serving of drinking water other than upon request in eating or drinking establishments, including but not limited to restaurants, hotels, cafes, cafeterias, bars, or other public places where food or drink are served and/or purchased;

(7) The irrigation with potable water of ornamental turf on public street medians; and

(8) The irrigation with potable water of landscapes outside of newly constructed homes and buildings in a manner inconsistent with regulations or other requirements established by the California Building Standards Commission and the Department of Housing and Community Development.

(b) To promote water conservation, operators of hotels and motels shall provide guests with the option of choosing not to have towels and linens laundered daily. The hotel or motel shall prominently display notice of this option in each guestroom using clear and easily understood language.

(c) Immediately upon this subdivision taking effect, all commercial, industrial and institutional properties that use a water supply, any portion of which is from a source other than a water supplier subject to section 865, shall either:

(1) Limit outdoor irrigation of ornamental landscapes or turf with potable water to no more than two days per week; or

(2) Reduce potable water usage supplied by sources other than a water supplier by 25 percent for the months of June 2015 through October 2016 as compared to the amount used from those sources for the same months in 2013.

(d) The taking of any action prohibited in subdivision (a) or (e), or the failure to take any action required in subdivision (b) or (c) is an infraction punishable by a fine of up to five hundred dollars ($500) for each day in which the violation occurs. The fine for the infraction is in addition to, and does not supersede or limit, any other remedies, civil or criminal.

(e)(1) To prevent the waste and unreasonable use of water and to promote water conservation, any homeowners' association or community service organization or similar entity is prohibited from:

(A) Taking or threatening to take any action to enforce any provision of the governing documents or architectural or landscaping guidelines or policies of a common interest development where that provision is void or unenforceable under section 4735, subdivision (a) of the Civil Code; or

(B) Imposing or threatening to impose a fine, assessment, or other monetary penalty against any owner of a separate interest for reducing or eliminating the watering of vegetation or lawns during a declared drought emergency, as described in section 4735, subdivision (c) of the Civil Code.

(2) As used in this subdivision:

(A) “Architectural or landscaping guidelines or policies” includes any formal or informal rules other than the governing documents of a common interest development.

(B) “Homeowners' association” means an “association” as defined in section 4080 of the Civil Code.

(C) “Common interest development” has the same meaning as in section 4100 of the Civil Code.

(D) “Community service organization or similar entity” has the same meaning as in section 4110 of the Civil Code.

(E) “Governing documents” has the same meaning as in section 4150 of the Civil Code.

(F) “Separate interest” has the same meaning as in section 4185 of the Civil Code.

(3) If a disciplinary proceeding or other proceeding to enforce a rule in violation of subdivision (e)(1) is initiated, each day the proceeding remains pending shall constitute a separate violation of this regulation.

NOTE: AUTHORITY CITED: SECTION 1058.5, WATER CODE.

REFERENCE: ARTICLE X, SECTION 2, CALIFORNIA CONSTITUTION; SECTIONS 4080, 4100, 4110, 4150, 4185 AND 4735, CIVIL CODE; SECTIONS 102, 104, 105, 275, 350 AND 10617, WATER CODE; AND LIGHT V. STATE WATER RESOURCES CONTROL BOARD (2014) 226 CAL.APP.4TH 1463.

HISTORY

1. *New section filed 7-28-2014 as an emergency; operative 7-28-2014 (Register 2014, No. 31). The finding of emergency was exempt from OAL review pursuant to Water Code section 1058.5(b). Pursuant to Water Code section 1058.5(c), a Certificate of Compliance must be transmitted to OAL by 4-24-2015 or emergency language will be repealed by operation of law on the following day.*
2. *New section refiled (with further amendments to section heading and section) 3-27-2015 as an emergency; operative 3-27-2015 (Register 2015, No. 13). Pursuant to Water Code section 1058.5(c), a Certificate of Compliance must be transmitted to OAL by 12-22-2015 or emergency language will be repealed by operation of law on the following day.*
3. *New section refiled (with further amendments to section and Note) 5-18-2015 as an emergency; operative 5-18-2015 (Register 2015, No. 21). The finding of emergency was exempt from OAL review pursuant to Water Code section 1058.5(b). Pursuant to Water Code section 1058.5(c), a Certificate of Compliance must be transmitted to OAL by 2-12-2016 or emergency language will be repealed by operation of law on the following day.*
4. *New section refiled (with further amendments to section and Note) 2-11-2016 as an emergency; operative 2-11-2016 (Register 2016, No. 7). The finding of emergency was exempt from OAL review pursuant to Water Code section 1058.5(b). Pursuant to Water Code section 1058.5(c), a Certificate of Compliance must be transmitted to OAL by 11-7-2016 or emergency language will be repealed by operation of law on the following day.*

§ 865. Mandatory Actions by Water Suppliers.

(a) As used in this section:

(1) “Distributor of a public water supply” has the same meaning as under section 350 of the Water Code, except it does not refer to such distributors when they are functioning solely in a wholesale capacity, but does apply to distributors when they are functioning in a retail capacity.

(2) “R-GPCD” means residential gallons per capita per day.

(3) “Total potable water production” means all potable water that enters into a water supplier's distribution system, excluding water placed into storage and not withdrawn for use during the reporting period, or water exported outsider the supplier's service area.

(4) “Urban water supplier” means a supplier that meets the definition set forth in Water Code section 10617, except it does not refer to suppliers when they are functioning solely in a wholesale capacity, but does apply to suppliers when they are functioning in a retail capacity.

(b) In furtherance of the promotion of water conservation each urban water supplier shall:

(1) Provide prompt notice to a customer whenever the supplier obtains information that indicates that a leak may exist within the end-users exclusive control.

(2) Prepare and submit to the State Water Resources Control Board by the 15th of each month a monitoring report on forms provided by the Board. The monitoring report shall include the amount of potable water the urban water supplier produced, including water provided by a wholesaler, in the preceding calendar month and shall compare that amount to the amount produced in the same calendar month in 2013. The monitoring report shall specify the population served by the urban water supplier, the percentage of water produced that is used for the residential sector, descriptive statistics on water conservation compliance and enforcement efforts, the number of days that outdoor irrigation is allowed, and monthly commercial, industrial and institutional sector use. The monitoring report shall also estimate the gallons of water per person per day used by the residential customers it serves.

(c)(1) To prevent the waste and unreasonable use of water and to meet the requirements of the Governor's November 13, 2015 Executive Order, each urban water supplier shall reduce its total potable water production by the percentage identified as its conservation standard in this subdivision. Each urban water supplier's conservation standard considers its service area's relative per capita water usage.

(2) Each urban water supplier whose source of supply does not include groundwater or water imported from outside the hydrologic region in which the water supplier is located, and that has a minimum of four years' reserved supply available, may submit to the Executive Director for approval a request that, in lieu of the reduction that would otherwise be required under paragraphs (3) through (10), the urban water supplier shall reduce its total potable water production by 4 percent for each month as compared to the amount used in the same month in 2013. Any such request shall be accompanied by information showing that the supplier's sources of supply do not include groundwater or water imported from outside the hydrologic region and that the supplier has a minimum of four years' reserved supply available.

(3) Each urban water supplier whose average July-September 2014 R-GPCD was less than 65 shall reduce its total potable water production by 8 percent for each month as compared to the amount used in the same month in 2013.

(4) Each urban water supplier whose average July-September 2014 R-GPCD was 65 or more but less than 80 shall reduce its total potable water production by 12 percent for each month as compared to the amount used in the same month in 2013.

(5) Each urban water supplier whose average July-September 2014 R-GPCD was 80 or more but less than 95 shall reduce its total potable water production by 16 percent for each month as compared to the amount used in the same month in 2013.

(6) Each urban water supplier whose average July-September 2014 R-GPCD was 95 or more but less than 110 shall reduce its total potable water production by 20 percent for each month as compared to the amount used in the same month in 2013.

(7) Each urban water supplier whose average July-September 2014 R-GPCD was 110 or more but less than 130 shall reduce its total potable water production by 24 percent for each month as compared to the amount used in the same month in 2013.

(8) Each urban water supplier whose average July-September 2014 R-GPCD was 130 or more but less than 170 shall reduce its total potable water production by 28 percent for each month as compared to the amount used in the same month in 2013.

(9) Each urban water supplier whose average July-September 2014 R-GPCD was 170 or more but less than 215 shall reduce its total potable water production by 32 percent for each month as compared to the amount used in the same month in 2013.

(10) Each urban water supplier whose average July-September 2014 R-GPCD was 215 or more shall reduce its total potable water production by 36 percent for each month as compared to the amount used in the same month in 2013.

(d)(1) Beginning June 1, 2015, each urban water supplier shall comply with the conservation standard specified in subdivision (c), with any modifications to the conservation standard pursuant to subdivision (f) applying beginning March 1.

(2) Compliance with the requirements of this subdivision shall be measured monthly and assessed on a cumulative basis through October 2016.

(e)(1) Each urban water supplier that provides potable water for commercial agricultural use meeting the definition of Government Code section 51201, subdivision (b), may subtract the amount of water provided for commercial agricultural use from its potable water production total, provided that any urban water supplier that subtracts any water provided for commercial agricultural use from its total potable water production shall:

(A) Impose reductions determined locally appropriate by the urban water supplier, after considering the applicable urban water supplier conservation standard specified in subdivision (c), for commercial agricultural users meeting the definition of Government Code section 51201, subdivision (b) served by the supplier;

(B) Report its total potable water production pursuant to subdivision (b)(2) of this section, the total amount of water supplied for commercial agricultural use, and shall identify the reduction imposed on its commercial agricultural users and each recipient of potable water for commercial agricultural use;

(C) Certify that the agricultural uses it serves meet the definition of Government Code section 51201, subdivision (b); and

(D) Comply with the Agricultural Water Management Plan requirement of paragraph 12 of the April 1, 2015 Executive Order for all commercial agricultural water served by the supplier that is subtracted from its total potable water production.

(2) Submitting any information pursuant to subdivision (e)(1)(B) or (C) of this section that is found to be materially false by the Board is a violation of this regulation, punishable by civil liability of up to five hundred dollars ($500) for each day in which the violation occurs. Every day that the error goes uncorrected constitutes a separate violation. Civil liability for the violation is in addition to, and does not supersede or limit, any other remedies, civil or criminal.

(f) In consideration of the differences in climate affecting different parts of the state, growth experienced by urban areas and significant investments that have been made by some suppliers towards creating new, local, drought-resilient sources of potable water supply, an urban water supplier's conservation standard identified in subdivision (c) shall be reduced by an amount, not to exceed eight (8) percentage points total, as follows:

(1) For an urban water supplier whose service area evapotranspiration (ETo) for the months of July through September exceeds the statewide average evapotranspiration, as determined by the Board, for the same months by five (5) percent or more, the supplier's conservation standard identified in subdivision (c) shall be reduced:

(A) By two (2) percentage points if the supplier's service area evapotranspiration exceeds the statewide average by five (5) percent or more but less than ten (10) percent;

(B) By three (3) percentage points if the supplier's service area evapotranspiration exceeds the statewide average by ten (10) percent or more but less than twenty (20) percent;

(C) By four (4) percentage points if the supplier's service area evapotranspiration exceeds the statewide average by twenty (20) percent or more.

(D) Statewide average evapotranspiration is calculated as the arithmetic mean of all urban water suppliers' service area default evapotranspiration values for the months of July through September. Default service area evapotranspiration will be based on the California Irrigation Management System (CIMIS) ETo Zones Map zone for which the supplier's service area has

the greatest area of overlap. In lieu of applying its default service area evapotranspiration, a supplier may use specific data from CIMIS stations within its service area that have at least a five-year period of record, or a three year continuous period of record, to identify a more specifically-applicable evapotranspiration for its service area. If no CIMIS station exists within the supplier's service area, a weather station of comparable accuracy, meeting the preceding period of record requirements, may be used. To qualify for the in-lieu climate adjustment, the supplier shall submit the following data to the Board by March 15, 2016 for each station: station ID; station location; and monthly average evapotranspiration, in inches per month, for July, August, and September for either the five-year period of record or the three-year continuous period of record.

(2) To account for water efficient growth experienced in the state since 2013, urban water suppliers' conservation standards shall be reduced by the product of the percentage change in potable water production since 2013 and the percentage reduction in potable water use required pursuant to subdivision (c), rounded to the nearest whole percentage point. Change in potable water production since 2013 shall be calculated as the sum of the following:

(A) The number of additional permanent residents served since January 1, 2013, multiplied by the average residential water use per person for that supplier's service area during the months of February through October, 2015, in gallons; and

(B) The number of new commercial, industrial and institutional connections since January 1, 2013, multiplied by the average commercial, industrial and institutional water use per connection for that supplier's service area during the months of February through October, 2015, in gallons.

(C) To qualify for the growth credit the supplier shall submit to the Board the following data by March 15, 2016: the number of additional permanent residents served since January 1, 2013 and the number of new commercial, industrial and institutional connections since January 1, 2013.

(3) For an urban water supplier that supplies, contracts for, or otherwise financially invests in, water from a new local, drought-resilient source of supply, the use of which does not reduce the water available to another legal user of water or the environment, the conservation standard identified in subdivision (c) shall be reduced:

(A) By one (1) percentage point if the supplier's qualifying source of supply is one (1) percent or more but less than two (2) percent of the supplier's total potable water production;

(B) By two (2) percentage points if the supplier's qualifying source of supply is two (2) percent or more but less than three (3) percent of the supplier's total potable water production;

(C) By three (3) percentage points if the supplier's qualifying source of supply is three (3) percent or more but less than four (4) percent of the supplier's total potable water production;

(D) By four (4) percentage points if the supplier's qualifying source of supply is four (4) percent or more but less than five (5) percent of the supplier's total potable water production;

(E) By five (5) percentage points if the supplier's qualifying source of supply is five (5) percent or more but less than six (6) percent of the supplier's total potable water production;

(F) By six (6) percentage points if the supplier's qualifying source of supply is six (6) percent or more but less than seven (7) percent of the supplier's total potable water production;

(G) By seven (7) percentage points if the supplier's qualifying source of supply is seven (7) percent or more but less than eight (8) percent of the supplier's total potable water production;

(H) By eight (8) percentage points if the supplier's qualifying source of supply is eight (8) percent or more of the supplier's total potable water production.

(I) To qualify for this reduction the supplier must certify, and provide documentation to the Board upon request demonstrating, the percent of its total potable water production that comes from a local, drought-resilient source of supply developed after 2013, the supplier's investment in that local, drought-resilient source of supply, and that the use of that supply does not reduce the water available to another legal user of water or the environment. To qualify for this reduction an urban water supplier shall submit the required certification to the Board by March 15, 2016.

(J) Certifications that do not meet the requirements of subdivision (f)(3)(I), including certifications for which documentation does not support that the source of supply is a local, drought-resilient source of supply, the use of which does not reduce the water available to another legal user of water or the environment, will be rejected. Submitting a certification or supporting documentation pursuant to subdivision (f)(3)(I) that is found to be materially false by the Board is a violation of this regulation, punishable by civil liability of up to five hundred dollars ($500) for each day in which the violation occurs. Every day that the error goes uncorrected constitutes a separate violation. Civil liability for the violation is in addition to, and does not supersede or limit, any other remedies, civil or criminal.

(4) No urban water supplier's conservation standard shall drop below eight (8) percent as a consequence of the reductions identified in this subdivision. No reduction pursuant to this subdivision shall be applied to any urban water supplier whose conservation standard is four (4) percent based on subdivision (c)(2).

(g)(1) To prevent waste and unreasonable use of water and to promote water conservation, each distributor of a public water supply that is not an urban water supplier shall take one or more of the following actions:

(A) Limit outdoor irrigation of ornamental landscapes or turf with potable water by the persons it serves to no more than two days per week; or

(B) Reduce by 25 percent its total potable water production relative to the amount produced in 2013.

(2) Each distributor of a public water supply that is not an urban water supplier shall submit a report by September 15, 2016, on a form provided by the Board, that either confirms compliance with subdivision (g)(1)(A) or identifies total potable water production, by month, from December, 2015 through August, 2016, and total potable water production, by month, for the same months in 2013.

NOTE: AUTHORITY CITED: SECTION 1058.5, WATER CODE.

REFERENCE: ARTICLE X, SECTION 2, CALIFORNIA CONSTITUTION; SECTIONS 102, 104, 105, 275, 350, 1846, 10617 AND 10632, WATER CODE; AND LIGHT V. STATE WATER RESOURCES CONTROL BOARD (2014) 226 CAL.APP.4TH 1463.

HISTORY

1. *New section filed 7-28-2014 as an emergency; operative 7-28-2014 (Register 2014, No. 31). The finding of emergency was exempt from OAL review pursuant to Water Code section 1058.5(b). Pursuant to Water Code section 1058.5(c), a Certificate of Compliance must be transmitted to OAL by 4-24-2015 or emergency language will be repealed by operation of law on the following day.*
2. *New section refiled (with further amendments) 3-27-2015 as an emergency; operative 3-27-2015 (Register 2015, No. 13). Pursuant to Water Code section 1058.5(c), a Certificate of Compliance must be transmitted to OAL by 12-22-2015 or emergency language will be repealed by operation of law on the following day.*
3. *New section refiled (with further amendments to section and Note) 5-18-2015 as an emergency; operative 5-18-2015 (Register 2015, No. 21). The finding of emergency was exempt from OAL review pursuant to Water Code section 1058.5(b). Pursuant to Water Code section 1058.5(c), a Certificate of Compliance must be transmitted to OAL by 2-12-2016 or emergency language will be repealed by operation of law on the following day.*
4. *New section refiled with further amendments 2-11-2016 as an emergency; operative 2-11-2016 (Register 2016, No. 7). The finding of emergency was exempt from OAL review pursuant to Water Code section 1058.5(b). Pursuant to Water Code section 1058.5(c), a Certificate of Compliance must be transmitted to OAL by 11-7-2016 or emergency language will be repealed by operation of law on the following day.*

§ 866. Additional Conservation Tools.

(a)(1) To prevent the waste and unreasonable use of water and to promote conservation, when a water supplier does not meet its conservation standard required by section 865 the Executive Director, or the Executive Director's

designee, may issue conservation orders requiring additional actions by the supplier to come into compliance with its conservation standard.

(2) A decision or order issued under this article by the Board or an officer or employee of the Board is subject to reconsideration under article 2 (commencing with section 1122) of chapter 4 of part 1 of division 2 of the Water Code.

(b) The Executive Director, or his designee, may issue an informational order requiring water suppliers, or commercial, industrial or institutional properties that receive any portion of their supply from a source other than a water supplier subject to section 865, to submit additional information relating to water production, water use or water conservation. The failure to provide the information requested within 30 days or any additional time extension granted is a violation subject to civil liability of up to $500 per day for each day the violation continues pursuant to Water Code section 1846.

(c) Orders issued under previous versions of this subdivision shall remain in effect and shall be enforceable as if adopted under this version.

NOTE: AUTHORITY: SECTION 1058.5, WATER CODE.

REFERENCE: ARTICLE X, SECTION 2, CALIFORNIA CONSTITUTION; SECTIONS 100, 102, 104, 105, 174, 186, 187, 275, 350, 1051, 1122, 1123, 1825, 1846, 10617 AND 10632, WATER CODE; AND LIGHT V. STATE WATER RESOURCES CONTROL BOARD (2014) 226 CAL.APP.4TH 1463.

HISTORY

1. *New section filed 5-18-2015 as an emergency; operative 5-18-2015 (Register 2015, No. 21). The finding of emergency was exempt from OAL review pursuant to Water Code section 1058.5(b). Pursuant to Water Code section 1058.5(c), a Certificate of Compliance must be transmitted to OAL by 2-12-2016 or emergency language will be repealed by operation of law on the following day.*
2. *New section refiled with further amendments 2-11-2016 as an emergency; operative 2-11-2016 (Register 2016, No. 7). The finding of emergency was exempt from OAL review pursuant to Water Code section 1058.5(b). Pursuant to Water Code section 1058.5(c), a Certificate of Compliance must be transmitted to OAL by 11-7-2016 or emergency language will be repealed by operation of law on the following day.*

Article 23. Stream Systems Declared to be Fully Appropriated

§ 870. Purpose of this Article.

By Order WR 89-25, adopted on November 16, 1989, pursuant to Water Code Sections 1205 through 1207, the board initially declared various stream systems in this state to be fully appropriated either year-round or during specified months. Order WR 89-25 included a listing of these stream systems and specified the seasons during which water is unavailable for appropriation therefrom. The purpose of this article is to provide procedures (1) for revoking or revising the status of stream systems declared to be fully appropriated by the initial declaration or any revised declaration, (2) for adding stream systems to

the initial or any revised declaration, and (3) for public participation in the process through which a declaration is changed.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 1205, 1206 AND 1207, WATER CODE.

HISTORY

1. New article 23 and section filed 4-7-93; operative 5-7-93 (Register 93, No. 15).

§ 871. Revocation or Revision of a Declaration.

(a) The board may, upon its own motion or upon petition of any interested person, revoke or revise a declaration, as hereinafter provided.

(b) Upon recommendation of the Chief, Division of Water Rights, and following notice and hearing, the board may adopt an order revoking the fully-appropriated status of a stream system which has previously been declared fully appropriated, or revising any condition specified in a declaration upon which applications to appropriate unappropriated water will be accepted for filing and registrations of small domestic use appropriations will be accepted. The Chief's recommendation for revocation or revision may be based upon any relevant factor, including but not limited to a change in circumstances from those considered in a previous water right decision determining that no water remains available for appropriation, or upon reasonable cause derived from hydrologic data, water usage data, or other relevant information acquired by the Division of Water Rights in the course of any investigation conducted by it.

(c) Any person may petition the board to revoke or revise the fully appropriated status of a stream system included in a declaration. The Chief, Division of Water Rights, shall give notice of receipt of any such petition to all persons known by the Chief to be interested in the fully-appropriated status of the stream system.

(1) The petition shall include hydrologic data, water usage data, or other relevant information based upon which the Chief, Division of Water Rights, may determine that reasonable cause exists to conduct a hearing on the question whether the fully appropriated status of the stream system should be revoked or revised.

(2) The petition may also be accompanied, depending upon the magnitude of the proposed appropriation, either (A) by a proposed application to appropriate unappropriated water, or (B) by a proposed registration of small domestic use, notwithstanding that the proposed application or registration is unacceptable because it proposes appropriation from a stream system declared to be fully appropriated and does not meet existing conditions for acceptance. Any such proposed application or registration should be complete pursuant to the law and the rules of the board, including payment of the filing fee. The board may cancel the application for failure to pay any annual fee for the application when due.

(3) A proposed application or registration submitted pursuant to subsection (c)(2) will not be accepted but will be retained by the board. Should the board thereafter act in response to the petition to change the declaration in a manner which would make the proposed application or registration acceptable, the proposed application or registration will, if otherwise complete pursuant to the law and the rules of the board, be accepted. A proposed application or registration accepted pursuant to this subsection shall be assigned a priority superior to that assigned to any subsequently retained or accepted application or registration, respectively, proposing to appropriate from a source included in the earlier proposed application or registration; provided that, in proceeding upon competing applications accepted because of a change in the declaration pursuant to this section, the board will implement all provisions of law governing approval and rejection of applications including, but not limited to, Water Code section 1255 relating to public interest.

(4) If the Chief determines that the petition shows reasonable cause to conduct a hearing on the question whether the declaration should be changed, the Chief shall notice a hearing on the issue. The board may thereafter adopt an order changing the declaration or declining to do so.

(5) If the Chief determines that the petition does not show reasonable cause to conduct a hearing on the question whether the declaration should be changed, the Chief shall notify the petitioner, and all persons given notice pursuant to subsection (c) of this section, of such determination. The petitioner may, within 30 days of the date of the notice, file a request that the board review the Chief's determination. Following receipt of any such request timely filed, the board will review the Chief's determination. The board's review shall be limited to the information provided by petitioner to the Chief, pursuant to subsection (c)(1) of this section. Following its review, the board may affirm the Chief's determination, direct the Chief to reconsider the determination, or direct the Chief to notice a hearing on the question whether the declaration should be changed.

NOTE: AUTHORITY CITED: SECTIONS 1058 AND 1530, WATER CODE.
REFERENCE: SECTIONS 1205, 1206, 1207 AND 1525, WATER CODE.

HISTORY

1. *New section filed 4-7-93; operative 5-7-93 (Register 93, No. 15).*
2. *Amendment of subsections (c)(2)-(3) and amendment of Note filed 12-23-2003 as an emergency; operative 1-1-2004 (Register 2003, No. 52). Pursuant to Water Code section 1530 this rulemaking action remains in effect until revised by the State Water Resources Control Board.*

§ 872. Addition of Stream Systems to the Declaration.

(a) The board may order that a stream system be added to the declaration, and the order may specify conditions upon which applications will nevertheless

be accepted for filing. Any such order shall contain a finding that the supply of water in the stream system is being fully applied to beneficial uses and that a previous water right decision has determined that no water remains available for appropriation.

(b) For the purposes of this section, the term "water right decision" shall mean (1) any decision, order, resolution, staff analysis of a minor protested application, or similar document issued by the board based on evidence taken at an adjudicatory proceeding or investigation, including but not limited to a decision issued pursuant to subsection (c); (2) any final order, judgment, decree, decision, opinion, writ, or similar document issued by a court of this state or of the United States; or (3) any statute of this state or of the United States; provided that, in any case, the water right decision contains findings of fact or conclusions of law, or both, relevant to the question of availability of unappropriated water in the stream system at issue.

(c) The annual report of the Chief, Division of Water Rights, made pursuant to Water Code Section 1228.2(c), shall identify any stream system or systems which the Chief has reasonable cause to believe may become fully appropriated within the next reporting period. Any person believing that any stream system or systems should be declared to be fully appropriated may furnish information to the Chief, Division of Water Rights, to show that reasonable cause exists to conduct further hearing on the matter. Following issuance of the annual report, the Chief may notice a hearing or hearings to determine whether water remains available for appropriation from any such identified stream system or systems. Following the hearing, the board may issue a decision determining that no water remains available for appropriation. The board may thereafter adopt an order declaring that any such stream system is fully appropriated, pursuant to Water Code Section 1205.

(d) Any person may file a request for special notice of the annual report made by the Chief, Division of Water Rights, pursuant to Water Code Section 1228.2(c). The Chief shall mail a copy of the annual report to all persons filing such request.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 1205, 1206, 1207 AND 1228.2, WATER CODE.

HISTORY

1. New section filed 4-7-93; operative 5-7-93 (Register 93, No. 15).

§ 873. Applications Pending at Time of Revision or Addition.

(a) Whenever the board adopts an order revising any conditions specified in a declaration or declaring an additional stream system to be fully appropriated, the Chief, Division of Water Rights, shall review all pending applications, except applications identified in subsection (e), to appropriate unappropriated water from a stream system affected by any such revision or declaration.

(b) Applications determined by the Chief to be consistent with a revised or additional declaration shall be processed normally. In the case of applications determined by the Chief to be inconsistent in any material respect with the conditions of the revised declaration, the Chief shall provide the applicant a notice, entitled “Notice of Potential Cancellation of Water Right Application”. The notice shall specify the following elements:

(1) The manner in which the application is inconsistent with the revised declaration.

(2) A reasonable time within which the applicant may withdraw the application.

(3) A reasonable time within which the applicant may amend the application to make it consistent with the conditions of the declaration. An application so amended shall be processed normally.

(4) A reasonable time within which the applicant may provide information to show that the appropriation proposed by the application is entitled to the benefit of any area-of-origin protection principle. Any such information shall be provided in a form which complies with the formal requirements for information presented in an application to appropriate unappropriated water.

(5) A reasonable time within which the applicant may provide information to show that hydrologic circumstances have changed within the stream system declared to be fully appropriated, or that other circumstances exist which justify the continued processing of the application. Such information shall be in sufficient detail to support a prima facie finding that unappropriated water is available to supply the applicant. Any such information shall be provided in a form which complies with the formal requirements for information presented in an application to appropriate unappropriated water.

(c) If an applicant fails to respond to the Notice of Potential Cancellation of Water Right Application within the time specified therein, the Chief shall order cancellation of the application.

(d) If an applicant responds to the Notice of Potential Cancellation of Water Right Application within the specified time by providing information pursuant to subsection (b)(4), the Chief shall provide the board with a recommendation concerning disposition of the application. The recommendation shall be in the form of a proposed order which the board shall thereafter consider and act upon.

(e) The following classes of applications shall not be reviewed for consistency with a revised declaration and shall be processed normally:

(1) Applications filed by the Department of Water Resources or its predecessors pursuant to Water Code Section 10500 and held by the board.

(2) Proposed completed applications accompanying petitions for assignment of all or a portion of any application held by the board pursuant to Water Code Section 10504.

(3) Any application in favor of which a petition for release from priority of an application filed pursuant to Water Code Section 10500 is pending before the board.

(4) Protested applications, other than minor applications within the meaning of Water Code Section 1345 et seq., which have been noticed for hearing as of the date of adoption of the board's order.

(5) Protested applications, other than minor applications within the meaning of Water Code Section 1345 et seq., upon which the parties have stipulated to proceeding in lieu of hearing pursuant to section 760(a) as of the date of adoption of the board's order.

(6) Protested minor applications, within the meaning of Water Code Section 1345 et seq., with respect to which the Division of Water Rights has substantially commenced a field investigation as of the date of the board's order.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 1205, 1206, 1207 AND 1228.2, WATER CODE.

HISTORY

1. New section filed 4-7-93; operative 5-7-93 (Register 93, No. 15).

§ 874. Notice of Hearings and Hearing Rules of Procedure.

(a) The Chief, Division of Water Rights, shall give notice of any hearing scheduled pursuant to this article in accordance with Water Code Section 1207 and shall in addition mail notice at least 60 days prior to the date of the hearing to all persons interested in any pending application to appropriate unappropriated water from any stream which is the subject of the hearing.

(b) Hearings pursuant to this article shall be governed by sections 761, 762, and 763, except that any person who observes the pre-hearing submittal requirements specified in the hearing notice shall be recognized as an interested party.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 1205, 1206, 1207 AND 1228.2, WATER CODE.

HISTORY

1. New section filed 4-7-93; operative 5-7-93 (Register 93, No. 15).

Article 24. Curtailment of Diversions and Other Actions Based on Insufficient Flow to Meet All Needs

§ 875. Curtailments Due to Lack of Water Availability. [Repealed]

NOTE: AUTHORITY: SECTIONS 1058 AND 1058.5, WATER CODE.

REFERENCE: SECTIONS 174, 1050, 1051, 1051.5, 1052, 1058.5, 1122, 1123 AND 1825, WATER CODE.

HISTORY

1. New article 24 (sections 875-879.2) filed 6-2-2014 as an emergency; operative 6-2-2014 (Register 2014, No. 23). The finding of emergency was exempt from OAL review

pursuant to Water Code section 1058.5(b). Pursuant to Water Code section 1058.5(c), a Certificate of Compliance must be submitted to OAL by 2-27-2015 or emergency language will be repealed by operation of law on the following day.

2. New section filed 7-16-2014 as an emergency; operative 7-16-2014 (Register 2014, No. 29). The finding of emergency was exempt from OAL review pursuant to Water Code section 1058.5(b). Pursuant to Water Code section 1058.5(c), a Certificate of Compliance must be transmitted to OAL by 4-13-2015 or emergency language will be repealed by operation of law on the following day.

3. Repealed by operation of Government Code section 11346.1(g) (Register 2015, No. 18).

4. Amendment of article heading filed 7-6-2015 as an emergency pursuant to Water Code section 1058.5(a); operative 7-6-2015 (Register 2015, No. 28). This finding of emergency was exempt from OAL review pursuant to Water Code section 1058.5(b). Pursuant to Water Code section 1058.5(c), a Certificate of Compliance must be transmitted to OAL by 4-1-2016 or emergency language will be repealed by operation of law on the following day.

§ 876. Additional Water User Information for the Protection of Specific Fisheries in Tributaries to the Russian River.

(c) The State Water Resources Control Board (State Board) has authority to ensure the protection and preservation of streams and to limit diversions to protect critical flows for species, including for state- and federally- threatened and endangered salmon and steelhead species. The following watersheds have been identified as critical rearing habitat for juvenile state- and federally-listed Central California Coast coho salmon (CCC coho salmon) and Central California Coast steelhead (CCC steelhead).

(1) The portion of the Mark West Creek watershed as defined by the United States Geological Survey - Watershed Boundary Dataset - Hydrologic Unit Code 180101100706. Mark West Creek enters the Russian River from the south at river mile 31, along the northern border of Forestville. This portion of the Mark West Creek watershed spans approximately 57 square miles.

(2) Mill Creek. Mill Creek is a tributary to Dry Creek, which enters the Russian River from the west at river mile 42, approximately one mile south of Healdsburg. The Mill Creek watershed spans approximately 23 square miles.

(3) Green Valley Creek. Green Valley Creek enters the Russian River from the south at river mile 29, along the northwestern border of Forestville. The Green Valley Creek watershed spans approximately 38 square miles.

(4) Dutch Bill Creek. Dutch Bill Creek enters the Russian River from the south at river mile 13, within the town of Monte Rio. The Dutch Bill Creek watershed spans approximately 12 square miles.

(e) Due to the known hydraulic connection between sub-surface water and surface streams in the Russian River watershed, as well as the limited water use information in the area, additional information on diversions, whether surface or subsurface, and use of water is needed to better assess impacts on surface

stream flows. The Deputy Director for the Division of Water Rights (Deputy Director) may issue informational orders to some or all landowners in, or suppliers of water from, the watersheds identified in subdivision (c), requiring them to provide additional information related to diversion and use of water, including but not limited to the: date of first use, location of diversion, type of diversion, types of beneficial uses, distance of well from the nearest surface stream, depth of the well, well screen interval(s), place of use, estimated diversion amount, estimated use amount, source of water, volume of storage, estimated pumping/diversion rate, amount of water anticipated to be needed this year, or any other information relevant to forecasting use and impacts to the surface streams in the current drought year or in contingency planning for continuation of the existing drought emergency. Any party receiving an order under this subdivision shall provide the requested information within 30 days. The Deputy Director may grant additional time for the submission of information regarding diversion and use of water upon substantial compliance with the 30-day deadline and a showing of good cause.

(1) Each landowner is responsible for immediately providing notice of any informational order(s) to all water users associated with the parcel of land related to the informational order.

(2) The failure to provide the information requested within 30 days or any additional time extension granted, is a violation subject to civil liability of up to $500 per day for each day the violation continues pursuant to Water Code section 1846.

(f) New Diversions. For purposes of this subdivision, a new diversion means a surface or subsurface diversion initiated after issuance of a watershed-wide informational order to landowners in the watershed in which the new diversion is located. The owner of any new diversion must submit to the Deputy Director any information required by a watershed-wide informational order issued under subdivision (e) prior to commencement of the new diversion, unless the Deputy Director approves commencement of the diversion based on substantial compliance.

(g) The State Board has established an email distribution list that landowners or others may join to receive notices and updates regarding informational orders and conservation measures required per this section. Notice provided by email or by posting on the State Board's webpage shall be sufficient for all purposes related to notices and updates regarding the provisions of this section.

NOTE: AUTHORITY CITED: SECTIONS 1058 AND 1058.5, WATER CODE.

REFERENCE: ARTICLE X, SECTION 2, CALIFORNIA CONSTITUTION; SECTIONS 100, 102, 104, 105, 109, 174, 275, 1011, 1051, 1052 AND 1058.5, WATER CODE; AND LIGHT V. STATE WATER RESOURCES CONTROL BOARD (2014) 226 CAL.APP.4TH 1463.

HISTORY

1. *New section filed 7-6-2015 as an emergency pursuant to Water Code section 1058.5(a); operative 7-6-2015 (Register 2015, No. 28). This finding of emergency was exempt from OAL review pursuant to Water Code section 1058.5(b). Pursuant to Water Code section 1058.5(c), a Certificate of Compliance must be transmitted to OAL by 4-1-2016 or emergency language will be repealed by operation of law on the following day.*
2. *[PENDING – Effective and approved by OAL on 3-30-2016]*

§ 877. Emergency Curtailment Where Insufficient Flows Are Available to Protect Fish in Certain Watersheds. [Repealed]

NOTE: AUTHORITY CITED: SECTIONS 1058 AND 1058.5, WATER CODE.

REFERENCE: CAL. CONST., ART. X § 2; SECTIONS 100, 100.5, 104, 105, 275 AND 1058.5, WATER CODE; NATIONAL AUDUBON SOCIETY V. SUPERIOR COURT (1983) 33 CAL.3D 419; AND LIGHT V. STATE WATER RESOURCES CONTROL BOARD (2014) 226 CAL.APP.4TH 1463.

HISTORY

1. *New section filed 6-2-2014 as an emergency; operative 6-2-2014 (Register 2014, No. 23). The finding of emergency was exempt from OAL review pursuant to Water Code section 1058.5(b). Pursuant to Water Code section 1058.5(c), a Certificate of Compliance must be submitted to OAL by 2-27-2015 or emergency language will be repealed by operation of law on the following day.*
2. *Repealed by operation of Government Code section 11346.1(g) (Register 2015, No. 11).*
3. *New section filed 3-30-2015 as an emergency pursuant to Water Code section 1058.5(c); operative 3-30-2015 (Register 2015, No. 14). The finding of emergency was exempt from OAL review pursuant to Water Code section 1058.5(b). Pursuant to Water Code section 1058.5(c), a Certificate of Compliance must be transmitted to OAL by 12-28-2015 or emergency language will be repealed by operation of law on the following day.*
4. *Repealed by operation of Government Code section 11346.1(g) (Register 2016, No. 1).*

§ 878. Non-Consumptive Uses. [Repealed]

NOTE: AUTHORITY CITED: SECTIONS 1058 AND 1058.5, WATER CODE.

REFERENCE: CAL. CONST., ART. X § 2; AND SECTION 100, WATER CODE.

HISTORY

1. *New section filed 6-2-2014 as an emergency; operative 6-2-2014 (Register 2014, No. 23). The finding of emergency was exempt from OAL review pursuant to Water Code section 1058.5(b). Pursuant to Water Code section 1058.5(c), a Certificate of Compliance must be submitted to OAL by 2-27-2015 or emergency language will be repealed by operation of law on the following day.*
2. *Repealed by operation of Government Code section 11346.1(g) (Register 2015, No. 11).*
3. *New section filed 3-30-2015 as an emergency pursuant to Water Code section 1058.5(c); operative 3-30-2015 (Register 2015, No. 14). The finding of emergency was exempt from OAL review pursuant to Water Code section 1058.5(b). Pursuant to Water Code section 1058.5(c), a Certificate of Compliance must be transmitted to*

OAL by 12-28-2015 or emergency language will be repealed by operation of law on the following day.

4. Repealed by operation of Government Code section 11346.1(g) (Register 2016, No. 1).

§ 878.1. Minimum Health and Safety Needs. [Repealed]

NOTE: AUTHORITY CITED: SECTIONS 1058 AND 1058.5, WATER CODE.

REFERENCE: CAL. CONST., ART. X § 2; SECTIONS 100, 100.5, 104, 105, 106.3, 275 AND 1058.5, WATER CODE; AND ENVIRONMENTAL DEFENSE FUND V. EAST BAY MUNI. UTIL. DIST. (1980) 26 CAL.3D 183.

HISTORY

1. New section filed 6-2-2014 as an emergency; operative 6-2-2014 (Register 2014, No. 23). The finding of emergency was exempt from OAL review pursuant to Water Code section 1058.5(b). Pursuant to Water Code section 1058.5(c), a Certificate of Compliance must be submitted to OAL by 2-27-2015 or emergency language will be repealed by operation of law on the following day.

2. New subsection (a), subsection relettering and amendment of newly designated subsections (c)(1), (c)(2)(B), (d) and (e)(1) filed 7-16-2014 as an emergency; operative 7-16-2014 (Register 2014, No. 29). The finding of emergency was exempt from OAL review pursuant to Water Code section 1058.5(b). Pursuant to Water Code section 1058.5(c), a Certificate of Compliance must be transmitted to OAL by 4-13-2015 or emergency language will be repealed by operation of law on the following day.

3. Repealed by operation of Government Code section 11346.1(g) (Register 2015, No. 11).

4. New section filed 3-30-2015 as an emergency pursuant to Water Code section 1058.5(c); operative 3-30-2015 (Register 2015, No. 14). The finding of emergency was exempt from OAL review pursuant to Water Code section 1058.5(b). Pursuant to Water Code section 1058.5(c), a Certificate of Compliance must be transmitted to OAL by 12-28-2015 or emergency language will be repealed by operation of law on the following day.

5. Repealer of 7-16-2014 emergency amendment by operation of Government Code section 11346.1(f) (Register 2015, No. 18).

6. Repealed by operation of Government Code section 11346.1(g) (Register 2016, No. 1).

§ 878.2. Local Cooperative Solutions. [Repealed]

NOTE: AUTHORITY CITED: SECTIONS 1058 AND 1058.5, WATER CODE.

REFERENCE: SECTIONS 109, 1010, 1011, 1011.5 AND 1051.5, WATER CODE; AND CITY OF BARSTOW V. MOJAVE WATER AGENCY (2000) 23 CAL.3D 1224.

HISTORY

1. New section filed 6-2-2014 as an emergency; operative 6-2-2014 (Register 2014, No. 23). The finding of emergency was exempt from OAL review pursuant to Water Code section 1058.5(b). Pursuant to Water Code section 1058.5(c), a Certificate of Compliance must be submitted to OAL by 2-27-2015 or emergency language will be repealed by operation of law on the following day.

2. Repealed by operation of Government Code section 11346.1(g) (Register 2015, No. 11).

3. New section filed 3-30-2015 as an emergency pursuant to Water Code section 1058.5(c); operative 3-30-2015 (Register 2015, No. 14). The finding of emergency was exempt from OAL review pursuant to Water Code section 1058.5(b). Pursuant to

Water Code section 1058.5(c), a Certificate of Compliance must be transmitted to OAL by 12-28-2015 or emergency language will be repealed by operation of law on the following day.

4. Repealed by operation of Government Code section 11346.1(g) (Register 2016, No. 1).

§ 878.3. Alternative Water Sharing Agreements. [Repealed]

NOTE: AUTHORITY: SECTIONS 1058 AND 1058.5, WATER CODE.

REFERENCE: SECTIONS 109, 1011, 1011.5 AND 1051.5, WATER CODE; CITY OF BARSTOW V. MOJAVE WATER AGENCY (2000) 23 CAL.4TH 1224.

HISTORY

1. New section filed 7-16-2014 as an emergency; operative 7-16-2014 (Register 2014, No. 29). The finding of emergency was exempt from OAL review pursuant to Water Code section 1058.5(b). Pursuant to Water Code section 1058.5(c), a Certificate of Compliance must be transmitted to OAL by 4-13-2015 or emergency language will be repealed by operation of law on the following day.

2. Repealed by operation of Government Code section 11346.1(g) (Register 2015, No. 18).

§ 879. Reporting.

(c)(1) The Deputy Director may issue an informational order, as provided in paragraph (2), in any of the following circumstances:

(A) Upon receipt of a complaint that staff determines to merit investigation alleging interference with a water right by a water right holder, diverter or user;

(B) Where a water right holder, diverter or user asserts a right to divert under a pre-1914 or riparian right in response to an investigation, curtailment order or any notice of curtailment, and no Statement of Water Diversion and Use for such right was on file with the Board as of January 17, 2014;

(C) Where a water right holder, diverter or user fails to respond to an investigation, curtailment order or any notice of curtailment, or responds by asserting a right to divert under a contract or water transfer for which the Board has not approved a change petition and for which no record had been previously filed with the Board; or

(D) Upon receipt of information that indicates actual or threatened waste, unreasonable use, unreasonable method of diversion, or unlawful diversions of water by any water right holder, diverter or user.

(2) The Deputy Director may issue an order under this article requiring a water right holder, diverter or user to provide additional information related to a diversion or use described in (c)(1), including the claim of right; property patent date; the date of initial appropriation; diversions made or anticipated during the current drought year; basis of right and amount of a water transfer not subject to approval of the Board or Department of Water Resources; or any other information relevant to authenticating the right or forecasting use and supplies in the current drought year.

(3) Any party receiving an order under this subdivision shall provide the requested information within thirty (30) days. The Deputy Director may grant additional time for submission of information supporting the claim of right upon substantial compliance with the 30-day deadline and a showing of good cause.

(4) The failure to provide the information requested within 30 days or any additional time extension granted is a violation subject to civil liability of up to $500 per day for each day the violation continues pursuant to Water Code section 1846.

(5) Orders issued under previous versions of this subdivision shall remain in effect and shall be enforceable as if adopted under this version. The provisions of Article 12 of this Chapter (commencing with section 768) shall govern petitions for reconsideration of orders issued under this subdivision.

(6) The Deputy Director may delegate the authorities under this subdivision to an Assistant Deputy Director for the Division of Water Rights.

NOTE: AUTHORITY CITED: SECTIONS 1058 AND 1058.5, WATER CODE.

REFERENCE: SECTIONS 100, 183, 186, 187, 275, 348, 1050, 1051, 1058.5 AND 1846, WATER CODE.

HISTORY

1. *New section filed 6-2-2014 as an emergency; operative 6-2-2014 (Register 2014, No. 23). The finding of emergency was exempt from OAL review pursuant to Water Code section 1058.5(b). Pursuant to Water Code section 1058.5(c), a Certificate of Compliance must be submitted to OAL by 2-27-2015 or emergency language will be repealed by operation of law on the following day.*
2. *Amendment of subsections (a)(5), (b)(1)-(2) and (b)(5)-(6)(1), new subsection (c) and amendment of Note filed 7-16-2014 as an emergency; operative 7-16-2014 (Register 2014, No. 29). The finding of emergency was exempt from OAL review pursuant to Water Code section 1058.5(b). Pursuant to Water Code section 1058.5(c), a Certificate of Compliance must be transmitted to OAL by 4-13-2015 or emergency language will be repealed by operation of law on the following day.*
3. *Repealed by operation of Government Code section 11346.1(g) (Register 2015, No. 11).*
4. *Editorial correction restoring inadvertently repealed subsection (c) (Register 2015, No. 13).*
5. *New subsection (c) (with further amendments) and amendment of Note refiled 3-27-2015 as an emergency; operative 3-27-2015 (Register 2015, No. 13). Pursuant to Water Code section 1058.5(c), a Certificate of Compliance must be transmitted to OAL by 12-22-2015 or emergency language will be repealed by operation of law on the following day.*
6. *New section filed 3-30-2015 as an emergency pursuant to Water Code section 1058.5(c); operative 3-30-2015 (Register 2015, No. 14). The finding of emergency was exempt from OAL review pursuant to Water Code section 1058.5(b). Pursuant to Water Code section 1058.5(c), a Certificate of Compliance must be transmitted to OAL by 12-28-2015 or emergency language will be repealed by operation of law on the following day.*

7. Repealer of 7-16-2014 emergency amendment by operation of Government Code section 11346.1(f) (Register 2015, No. 18).

8. New subsection (c), including amendment of subsection (c)(2)(C), new subsection (c)(6) and amendment of Note, refiled 12-17-2015 as an emergency; operative 12-17-2015 (Register 2015, No. 51). Pursuant to Water Code section 1058.5(c), a Certificate of Compliance must be transmitted to OAL by 9-12-2016 or emergency language will be repealed by operation of law on the following day.

9. Repealer of subsections (a)-(b)(6)(iii) by operation of Government Code section 11346.1(g) (Register 2016, No. 1).

§ 879.1. Conditions of Permits, Licenses and Registrations. [Repealed]

NOTE: AUTHORITY CITED: SECTIONS 1058 AND 1058.5, WATER CODE.

REFERENCE: SECTIONS 100, 185, 275, 348, 1051 AND 1058.5, WATER CODE.

HISTORY

1. New section filed 6-2-2014 as an emergency; operative 6-2-2014 (Register 2014, No. 23). The finding of emergency was exempt from OAL review pursuant to Water Code section 1058.5(b). Pursuant to Water Code section 1058.5(c), a Certificate of Compliance must be submitted to OAL by 2-27-2015 or emergency language will be repealed by operation of law on the following day.

2. Repealed by operation of Government Code section 11346.1(g) (Register 2015, No. 11).

3. New section filed 3-30-2015 as an emergency pursuant to Water Code section 1058.5(c); operative 3-30-2015 (Register 2015, No. 14). The finding of emergency was exempt from OAL review pursuant to Water Code section 1058.5(b). Pursuant to Water Code section 1058.5(c), a Certificate of Compliance must be transmitted to OAL by 12-28-2015 or emergency language will be repealed by operation of law on the following day.

4. Repealed by operation of Government Code section 11346.1(g) (Register 2016, No. 1).

§ 879.2. Compliance and Enforcement. [Repealed]

NOTE: AUTHORITY CITED: SECTIONS 1058 AND 1058.5, WATER CODE.

REFERENCE: SECTIONS 1052, 1055, 1058.5, 1825 AND 1831, WATER CODE; AND NATIONAL AUDUBON SOCIETY V. SUPERIOR COURT (1983) 33 CAL.3D 419.

HISTORY

1. New section filed 6-2-2014 as an emergency; operative 6-2-2014 (Register 2014, No. 23). The finding of emergency was exempt from OAL review pursuant to Water Code section 1058.5(b). Pursuant to Water Code section 1058.5(c), a Certificate of Compliance must be submitted to OAL by 2-27-2015 or emergency language will be repealed by operation of law on the following day.

2. Repealed by operation of Government Code section 11346.1(g) (Register 2015, No. 11).

3. New section filed 3-30-2015 as an emergency pursuant to Water Code section 1058.5(c); operative 3-30-2015 (Register 2015, No. 14). The finding of emergency was exempt from OAL review pursuant to Water Code section 1058.5(b). Pursuant to Water Code section 1058.5(c), a Certificate of Compliance must be transmitted to OAL by 12-28-2015 or emergency language will be repealed by operation of law on the following day.

4. Repealed by operation of Government Code section 11346.1(g) (Register 2016, No. 1).

CHAPTER 2.5. WATER RIGHTS FOR STOCKPONDS

Article 1. Definitions

§ 880. Board.

"Board" when used in this subchapter means the State Water Resources Control Board.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: SECTIONS 1003.5 AND 1226.1, WATER CODE.

HISTORY

1. Renumbering and amendment of Section 900 to Section 880 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history of Subchapter 2.5 (Sections 900-926, not consecutive), see Register 74, No. 48.

§ 881. Stockpond.

"Stockpond" when used in this subchapter means a pond having a capacity not in excess of 10 acre-feet that is used primarily for watering livestock.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: SECTION 1226.1, WATER CODE.

HISTORY

1. Renumbering and amendment of Section 901 to Section 881 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 74, No. 48.

Article 2. Claims of Water Rights and Applications for Certification

§ 885. Forms.

A claim of water right for a stockpond and application for certification of the right pursuant to Article 2.5 (commencing with Section 1226) of Chapter 1 of Part 2 of Division 2 of the Water Code shall be filed in duplicate with the board upon a printed form furnished by the board.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: SECTIONS 1226, 1226.1 AND 1226.3, WATER CODE.

HISTORY

1. Renumbering and amendment of Section 905 to Section 885 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 74, No. 48.

§ 886. Refusal to Accept Claims.

A claim which does not contain the required information, which is illegible or which is not accompanied by the required filing fee will be returned to the sender as unacceptable.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: SECTIONS 1226.1, 1226.2 AND 1226.3, WATER CODE.

History

1. Renumbering and amendment of Section 906 to Section 886 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 74, No. 48.

2. Editorial correction amending section (Register 2005, No. 17).

§ 887. Number of Claims Required.

A separate claim must be filed for each stockpond.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 1226.1 AND 1226.3, WATER CODE.

History

1. Renumbering and amendment of Section 907 to Section 887 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 74, No. 48.

§ 888. Penalty for Perjury.

All claims shall be certified as true under penalty of perjury in accordance with Section 2015.5 of the Code of Civil Procedure.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 1226.1 AND 1226.3, WATER CODE.

History

1. Renumbering and amendment of Section 908 to Section 888 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 74, No. 48.

Article 3. Fees

§ 890. Fees.

Each claim shall be accompanied by a filing fee of ten dollars ($10.00).

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTION 1226.3, WATER CODE.

History

1. Renumbering and amendment of Section 910 to Section 890 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 74, No. 48.

Article 4. Notice of Claims and Protests

§ 895. Notices.

The board shall issue and deliver a notice of each claim to the board of supervisors of the county wherein the stockpond is located and to each person who has filed with the board a written request for notices and may send a notice of any claim to water users in the vicinity of the stockpond who in its judgment might be affected by the use of water as set forth in the claim.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 1226.1 AND 1226.3, WATER CODE.

History

1. Renumbering and amendment of Section 915 to Section 895 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 74, No. 48.

§ 896. Protests.

Any person affected may, within the time allowed in the notice or such further time as the board may allow, file with the board a written protest to the claim. The protestant shall send a copy of the protest to the claimant.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 1225, 1226,1226.1 AND 1330, WATER CODE.

History

1. Renumbering and amendment of Section 916 to Section 896 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 74, No. 48.

§ 897. Content of Protests.

A protest shall state the name and address of the protestant, the location of his point of diversion of water with respect to the claimant's stockpond, the grounds for protest, and that a copy of the protest has been mailed or delivered to the claimant.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 1225, 1226, 1226.1, 1330 AND 1331, WATER CODE.

History

1. Renumbering and amendment of Section 917 to Section 897 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 74, No. 48.

§ 898. Ground for Protest.

The only ground for a protest is that the claim contains a misstatement of a material fact. Material facts are: (1) The date of construction of the stockpond, (2) its capacity on January 1, 1975, (3) the primary purpose for which it was constructed and is used in watering livestock, and (4) that it was not the subject of water rights litigation between private parties prior to January 1, 1974.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 1225, 1226, 1226.1, 1330 AND 1331, WATER CODE.

History

1. Renumbering and amendment of Section 918 to Section 898 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 74, No. 48.

Article 5. Investigation, Hearing, and Certification of Claims

§ 900. Investigation.

Upon receipt of a claim, the board will conduct such investigation as in its judgment is necessary to certify the water right. Such investigation may, but need not, include an inspection of the stockpond.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 1051, 1225, 1226 AND 1251, WATER CODE.

HISTORY

1. *New Subchapter 2.5 (Sections 900-926, not consecutive) filed 11-27-74; designated effective 1-1-75 (Register 74, No. 48).*
2. *Renumbering and amendment of former Section 900 to Section 880, and renumbering amendment of Section 920 to Section 900 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).*

§ 901. Hearing.

When requested by a claimant or protestant, the board will hold a hearing to determine any material fact which is in dispute. The board may hold a hearing on its own motion. The provisions of Subchapter 2, Article 11, insofar as they are applicable, shall govern hearings regarding claims filed under this subchapter.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTION 1226.4, WATER CODE.

HISTORY

1. *Renumbering and amendment of former Section 901 to Section 881, and renumbering and amendment of Section 921 to Section 901 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 74, No. 48.*

§ 902. Certification.

The board will issue a certification of the water right if it appears that the material facts stated in the claim are true and entitle the claimant to a water right for the stockpond. The water right shall be subject to all prior rights.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 1226.1, 1226.2 AND 1226.3, WATER CODE.

HISTORY

1. *Renumbering and amendment of Section 922 to Section 902 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 74, No. 48.*
2. *Editorial correction amending section (Register 2005, No. 17).*

Article 6. Continued Use of the Stockpond and Revocation of the Certification

§ 905. Continued Use of the Stockpond.

At such other times as the board determines to be appropriate, the board will request certificate holders to furnish a statement under penalty of perjury that the water is continuing to be used primarily for stockwatering.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 1226.4 AND 1241, WATER CODE.

HISTORY

1. Renumbering and amendment of former Section 905 to Section 885, and renumbering and amendment of Section 925 to Section 905 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 74, No. 48.

§ 906. Revocation of the Certification.

The board may, after notice to the certificate holder and opportunity for hearing, revoke any certification upon a finding that the water has ceased to be used primarily for stockwatering.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 1226.4 AND 1241, WATER CODE.

HISTORY

1. Renumbering and amendment of former Section 906 to Section 886, and renumbering and amendment of Section 926 to Section 906 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 74, No. 48.

CHAPTER 2.7. WATER DIVERSION AND USE REPORTS

Article 1. Definitions

§ 907. Definitions.

The following definitions apply to the terms as they are used in this chapter.

(a) "Board" means the State Water Resources Control Board.

(b) "Board's website" means www.waterboards.ca.gov.

(c) "Diverter" means:

(1) Any person authorized to divert water under a permit or license; or

(2) Any person required under Water Code, Division 2, Part 5.1 to file a Statement of Water Diversions and Use; or

(3) Any person authorized to divert under a registration or certificate; or

(4) To the extent authorized by federal law, the federal government for rights claimed under permits, licenses, registrations, certificates, statements of water diversion and use, and non-reserved and reserved rights on file with the board.

(d) "Reports" refers to the following documents:

(1) Supplemental Statement of Water Diversion and Use Forms, pursuant to Water Code section 5104.

(2) Reports of Permittee and Licensee, pursuant to sections 925 and 929 of this title.

(3) Reports of Registration and Certificate Holders pursuant to section 924 of this title.

(4) Notices of Extraction and Diversion of Water, pursuant to Part 5 of Division 2 of the Water Code. Each person in the counties of Riverside, San Bernardino, Los Angeles and Ventura who, after 1959, extracts ground water in excess of 25 acre-feet in any year shall file with the board, within six months of the succeeding calendar year, a "Notice of Extraction and Diversion of Water" on a form provided by the board.

(5) Forms indicating a change of name, address or ownership.

(e) "Twelve month reporting period" means a calendar year beginning January 1 and ending the succeeding December 31.

NOTE: AUTHORITY CITED: SECTIONS 348(A), 1058, 1840 AND 1841, WATER CODE.
REFERENCE: SECTIONS 1003.5, 1395, 1396, 1397, 4999, 5001, 5105 AND 12261, WATER CODE.

HISTORY

1. *New chapter 2.7 (articles 1-2, sections 907-930), article 1 (section 907) and section filed 12-20-2010 as an emergency; operative 12-20-2010 (Register 2010, No. 52). Water Code section 1530 provides that the regulation shall be deemed an emergency and shall remain in effect until revised by the State Water Resources Control Board. For prior history, see Register 87, No. 10.*
2. *Amendment of section and Note filed 3-21-2016 as an emergency; operative 3-21-2016 (Register 2016, No. 13). Pursuant to Water Code section 1841(b), the amendments shall remain in effect until revised by the State Water Resources Control Board.*

§ 908. Compliance.

Failure to meet the requirements of this chapter is a violation subject to civil liability of up to $500 per day pursuant to Water Code section 1846.

NOTE: AUTHORITY CITED: SECTIONS 348(A), 1058, 1840 AND 1841, WATER CODE.
REFERENCE: SECTIONS 348(A) AND 1846, WATER CODE.

HISTORY

1. *New section filed 3-21-2016 as an emergency; operative 3-21-2016 (Register 2016, No. 13). Pursuant to Water Code section 1841(b), the regulation shall remain in effect until revised by the State Water Resources Control Board. For prior history, see Register 87, No. 10.*

Article 2. Declaration of Policy

§ 910. Purpose.

The regulations contained in this chapter are adopted for the purpose of implementing and carrying out provisions of Chapter 2.7 of Division 1 of the Water Code and Parts 2, 5 and 5.1 of Division 2 of the Water Code. The regulations identify requirements for the mandatory electronic filing of reports

on the board's website. Reports subject to mandatory electronic filing include: supplemental statements of water diversion and use, Water Right Progress Reports by Permittees, Reports of Licensees, Reports of Registration and Certificate Holders, Notices of Groundwater Extraction and Diversion, and reports filed by watermasters pursuant to Water Code section 5101, subdivisions (d) and (e).

NOTE: AUTHORITY CITED: SECTIONS 348(A), 1058, 1840 AND 1841, WATER CODE. REFERENCE: SECTIONS 348(A), 5101, 5103 AND 5104, WATER CODE.

HISTORY

1. *New article 2 (sections 910-930) and section filed 12-20-2010 as an emergency; operative 12-20-2010 (Register 2010, No. 52). Water Code section 1530 provides that the regulation shall be deemed an emergency and shall remain in effect until revised by the State Water Resources Control Board. For prior history, see Register 87, No. 10.*
2. *Amendment of section and Note filed 3-21-2016 as an emergency; operative 3-21-2016 (Register 2016, No. 13). Pursuant to Water Code section 1841(b), the amendments shall remain in effect until revised by the State Water Resources Control Board.*

§ 911. Construction.

(a) To the extent authorized by federal law, this chapter applies to the federal government and any reports filed by the federal government for rights claimed under permits, licenses, registrations, statements of water diversion and use, stockpond certificates, and non-reserved and reserved rights on file with the board.

(b) Nothing in this chapter shall be construed to limit or modify the board's authority to obtain information under any other lawful authority.

NOTE: AUTHORITY CITED: SECTIONS 348(A), 1058, 1840 AND 1841, WATER CODE. REFERENCE: SECTIONS 348(A), 1846, 5101, 5103 AND 5104, WATER CODE.

HISTORY

1. *New section filed 3-21-2016 as an emergency; operative 3-21-2016 (Register 2016, No. 13). Pursuant to Water Code section 1841(b), the regulation shall remain in effect until revised by the State Water Resources Control Board.*

§ 912. No Conflicts with Other Reporting Requirements.

(a) Any person with a water right identified in or subject to a statute, order, policy, regulation, decision, judgment or probationary designation of the board, a Regional Water Quality Control Board, or a court is responsible for meeting the terms and conditions of the statute, order, policy, regulation, decision or judgment and the requirements of this chapter. If there is any conflict or inconsistency between the water use reporting requirements subject to the statute, order, policy, regulation, decision, judgment or probationary designation and the requirements of this chapter, the more stringent requirement or requirements shall control in each instance.

(b) A permit, license, registration, or certificate holder is responsible for meeting the conditions of the permit, license, registration, or certificate and the requirements of this chapter. If there is any conflict or inconsistency between the permit, license, or registration condition for water use reporting and the requirements of this chapter, the more stringent requirement or requirements shall control in each instance.

NOTE: AUTHORITY CITED: SECTIONS 348(A), 1058, 1840 AND 1841, WATER CODE.
REFERENCE: SECTIONS 348(A) AND 1846, WATER CODE.

HISTORY

1. *New section filed 3-21-2016 as an emergency; operative 3-21-2016 (Register 2016, No. 13). Pursuant to Water Code section 1841(b), the regulation shall remain in effect until revised by the State Water Resources Control Board.*

§ 915. Changes in Name, Address or Ownership.

Pursuant to sections 691, 830, 831, and 1074 of this title, changes in name, address or ownership shall be immediately reported to the board electronically using a change of name, address or ownership form or the supplemental statement of change form available on the board's website.

NOTE: AUTHORITY CITED: SECTIONS 348(A), 1058, 1840 AND 1841, WATER CODE.
REFERENCE: SECTION 348(A), WATER CODE.

HISTORY

1. *New section filed 12-20-2010 as an emergency; operative 12-20-2010 (Register 2010, No. 52). Water Code section 1530 provides that the regulation shall be deemed an emergency and shall remain in effect until revised by the State Water Resources Control Board. For prior history, see Register 87, No. 10.*
2. *Amendment of section and Note filed 3-21-2016 as an emergency; operative 3-21-2016 (Register 2016, No. 13). Pursuant to Water Code section 1841(b), the amendments shall remain in effect until revised by the State Water Resources Control Board.*

§ 916. Request for Additional Time.

A diverter may submit a request for additional time to comply with the provisions of this chapter on a form available on the board's website. The Deputy Director for the Division of Water Rights may grant such requests upon a showing of good cause.

NOTE: AUTHORITY CITED: SECTIONS 348(A), 1058, 1840 AND 1841, WATER CODE.
REFERENCE: SECTION 348(A), WATER CODE.

HISTORY

1. *New section filed 3-21-2016 as an emergency; operative 3-21-2016 (Register 2016, No. 13). Pursuant to Water Code section 1841(b), the regulation shall remain in effect until revised by the State Water Resources Control Board. For prior history, see Register 87, No. 10.*

§ 917. Reporting - Insufficient Flows to Support All Diversions.

(a) When flows or projected available supplies in a watershed or subwatershed are sufficient to support some but not all projected diversion demand, the Deputy Director for the Division of Water Rights may require water diverters located within the watershed or subwatershed to electronically submit monthly or more frequent reports of water diversion.

(b) Reports of water diversion shall be submitted in accordance with a schedule approved by the Deputy Director for the Division of Water Rights. The schedule may require monthly, daily, or more frequent reporting. In determining the frequency of reporting, the Deputy Director for the Division of Water Rights shall not exceed the frequency of recording required under section 933, subdivision (b)(1), of this title.

(c) Water right diversion demand projections made under this section may be based on reported diversion and use data, including but not limited to data submitted with Progress Reports by Permittees, Reports of Licensees, Reports of Registration and Certificate Holders, Supplemental Statements of Water Diversion and Use, and reports filed by watermasters pursuant to Water Code section 5101, subdivisions (d) and (e).

(d) Water availability projections made under this section may be based on:

(1) Projections from the Department of Water Resources or its successor;

(2) Projections from the National Weather Service, California Nevada River Forecast Center, and similar sources;

(3) Stream gage data; and

(4) Other data the Deputy Director for the Division of Water Rights determines is appropriate, given data availability, data reliability, and staff resources.

(e) The failure to electronically submit diversion reports requested in accordance with the applicable schedule approved by the Deputy Director for the Division of Water Rights, even when no diversions are made, is a violation subject to civil liability of up to $500 per day pursuant to Water Code section 1846.

(f) This section shall only apply to diverters described in section 1841, subdivision (a) of the Water Code.

NOTE: AUTHORITY CITED: SECTIONS 348(A), 1058, 1840 AND 1841, WATER CODE.
REFERENCE: SECTIONS 348(A), 1846, 5101, 5103 AND 5104, WATER CODE.

HISTORY

1. New section filed 3-21-2016 as an emergency; operative 3-21-2016 (Register 2016, No. 13). Pursuant to Water Code section 1841(b), the regulation shall remain in effect until revised by the State Water Resources Control Board. For prior history, see Register 87, No. 10.

§ 918. Ground for Protest. [Renumbered]

History

1. Renumbering and amendment of Section 918 to Section 897 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 74, No. 48.

§ 920. Supplemental Statements of Water Diversion and Use.

(a) Supplemental statements of water diversion and use shall be filed on forms available at the board's website. A supplemental statement shall be filed annually by July 1 after the close of the twelve month reporting period, or promptly if there is a change in the name or address of the person diverting water, or more frequently as directed under section 917. Notice to the board of changes in name, address or ownership must also be reported electronically on the supplemental statement of change form on the board's website. Filing the supplemental statement of change form does not eliminate the requirement to file a supplemental statement of water diversion and use.

(b) After the board has received an initial statement of water diversion and use as required by Water Code section 5101, the board will provide a user name and password to the person required to file supplemental statements of water diversion and use. The electronic supplemental statement form will be pre-populated with current ownership information made available to the board. Failure to receive a notice providing a user name and password does not exempt the filer from the requirement to file a supplemental statement of change. Persons required to file a supplemental statement should notify the board prior to the annual reporting date to request a user name and password if the board has not already provided such information.

(c) The completed supplemental statement form shall include the following information:

(1) The name(s), address(es), and other ownership information for the diverter;

(2) The type of water right being claimed for the water diverted under the statement;

(3) The maximum rate of diversion achieved at any time during each month, if available;

(4) The amount of water directly diverted and collected to storage in each month and the total annual amount diverted. Each month must contain an entry. If no diversion occurred, a "0" should be entered;

(5) A description of the diversion works, including type of diversion and capacity of direct diversion and/or storage facility.

(6) Information on the device or method used to calculate the amount of water diverted, as required by chapter 2.8 of division 3 this title.

(7) The amount of water beneficially used in each month and the total annual amount beneficially used. Each month must contain an entry. If no beneficial use occurred in a given month, a "0" should be entered;

(8) The purpose(s) for which the water was diverted and used. Use information to be provided includes:

(A) irrigation, including crop type and acreage;

(B) frost protection, including acres covered;

(C) heat control, including acres covered;

(D) industrial, including type of activity;

(E) stock watering, including number and type of animals;

(F) municipal, including approximate population served, and seven digit public water system number or other identifier;

(G) domestic, including number of persons served, lawn or garden area, and seven digit public water system number or other identifier, if applicable;

(H) power generation, including installed capacity in kilowatts, megawatts or horsepower;

(I) recreational, including boating, fishing or other water sports;

(J) any additional uses not named above, including environmental use.

(9) Any changes in the other information contained in the preceding statement;

(10) Report of water transfers during the twelve month reporting period including transfer dates and approving agency;

(11) Report of transferred contract water including contract agency, contract number, source, amount of contract water in acre-feet and projected water use in the upcoming year.

(d) Water diversion measurement, either direct diversion or diversion to storage including the type of device(s) used, additional technology used, who installed the device(s) and any alternative method(s) used in measuring the water diversion.

(e) If a substitute or alternative water supply, such as groundwater, contract water, or recycled water, is being used in lieu of surface water to be reported under a statement, the report should indicate the source and amount of substitute or alternative water used and the amount of surface water offset, on a monthly basis.

(f) If water conservation efforts have resulted in a cessation or reduction in use, the report should include a description of the conservation efforts employed and indicate the extent and monthly amount of the reduction in water use due to these water conservation efforts.

NOTE: AUTHORITY CITED: SECTIONS 348(A),1058, 1840 AND 1841, WATER CODE.

REFERENCE: SECTIONS 348(A), 1010, 1011, 1011.5, 5100, 5101, 5103 AND 5104, WATER CODE.

HISTORY

1. New section filed 12-20-2010 as an emergency; operative 12-20-2010 (Register 2010, No. 52). Water Code section 1530 provides that the regulation shall be deemed an emergency and shall remain in effect until revised by the State Water Resources Control Board. For prior history, see Register 87, No. 10.

2. Amendment of section and Note filed 3-21-2016 as an emergency; operative 3-21-2016 (Register 2016, No. 13). Pursuant to Water Code section 1841(b), the amendments shall remain in effect until revised by the State Water Resources Control Board.

§ 921. Watermaster Reports Filed with the Board.

(a) Watermasters that elect to file annual reports with the board shall file the reports in an electronic format acceptable to the board.

(b) Reports filed with the board by a watermaster pursuant to Water Code section 5101(d) shall include the following information:

(1) Identity of the person(s) diverting water

(2) Description of the general purposes of use

(3) Description of the place of use

(4) The type of use

(5) The quantity of water diverted from each source.

(c) Reports filed with the board by a watermaster pursuant to Water Code section 5101(e) shall include the following information:

(1) Identity of the person(s) diverting water

(2) Description of the place of use

(3) The quantity of water diverted from each source.

(d) Reports filed with the board by a watermaster pursuant to Water Code section 5001 shall include the following information:

(1) Identity of the persons who have extracted or diverted water

(2) Description of the general place of use

(3) Quantity of water extracted or diverted from each source.

(e) Additional reporting criteria may be included if such criteria are included pursuant to an agreement between the board and the watermaster. Additional requirements may include: the diverter's mailing address, assessors parcel number(s), tract number, monthly diversion amounts, and total diversion amounts.

NOTE: AUTHORITY CITED: SECTIONS 348(A) AND 1058, WATER CODE.

REFERENCE: SECTIONS 348(A), 5001, 5101(D) AND 5101(E), WATER CODE.

HISTORY

1. New section filed 12-20-2010 as an emergency; operative 12-20-2010 (Register 2010, No. 52). Water Code section 1530 provides that the regulation shall be deemed an emergency and shall remain in effect until revised by the State Water Resources Control Board. For prior history, see Register 87, No. 10.

§ 922. Diverters in a Watermaster Service Area.

(a) Pursuant to section 5101 of the Water Code, any person who diverts water in a watermaster service area that is not included in reports filed by the watermaster with the board or a court shall report such diversions by filing a Supplemental Statement of Water Diversion and Use pursuant to section 920 of this chapter.

(b) Any person who diverts pursuant to a permit, license, registration, or certificate in a watermaster service area shall file reports pursuant to sections 924, 925 and 929 of this chapter, as applicable, even if the diversion is reported by the watermaster.

NOTE: AUTHORITY CITED: SECTIONS 348(A), 1058, 1840, 1841 AND 5103, WATER CODE. REFERENCE: SECTIONS 348(A), 5101(D) AND 5101(E), WATER CODE.

HISTORY

1. New section filed 3-21-2016 as an emergency; operative 3-21-2016 (Register 2016, No. 13). Pursuant to Water Code section 1841(b), the regulation shall remain in effect until revised by the State Water Resources Control Board. For prior history, see Register 87, No. 10.

§ 924. Water Use Reports of Registration and Certificate Holders.

(a) Reports of registration and certificate holders shall be filed annually by April 1 after the close of the twelve month reporting period. Provisional streamflow data may be used in preparing the water use report if final streamflow data are not available by the reporting deadline. If provisional streamflow data are used in the water use report, an amended report based on final streamflow data shall be filed within one month of the date the final streamflow data are available. The board may rely upon any report, including a report based on provisional data, until and unless a revised report is filed. The report shall be filed electronically on a form available at the board's website. Compliance with the requirement to file a water use report is a condition of every registration or certificate. A failure to file a report under this section is a violation of registration and certificate terms, as applicable.

(b) The annual reports shall include the following information:

(1) A statement of compliance or of non-compliance with the terms and conditions of the registration or certificate;

(2) The purpose(s) for which water is diverted and used;

(3) The quantity of water diverted from each point of diversion by month (or shorter timeframe if otherwise required); and

(4) For direct diversion, the maximum rate of diversion achieved at any time during each month, if available.

(c) The first reports of registration and certificate holders shall be filed for the diversion and use of water made during calendar year 2016. The report for 2016 shall be filed prior to April 1, 2017.

(d) The requirement to file annual reports of registration and certificate holders is in addition to and does not modify the five year renewal period for registrations under section 1228.5 of the Water Code.

NOTE: AUTHORITY CITED: SECTIONS 348(A), 1058, 1228.6, 1840 AND 1841, WATER CODE. REFERENCE: SECTIONS 348(A), 1226.1, 1226.2, 1228.2, 1228.3 AND 1846, WATER CODE.

HISTORY

1. New section filed 3-21-2016 as an emergency; operative 3-21-2016 (Register 2016, No. 13). Pursuant to Water Code section 1841(b), the regulation shall remain in effect until revised by the State Water Resources Control Board.

§ 925. Progress Reports by Permittee.

(a) As specified in section 847 of this title, water right permit holders are required to file annual progress reports. Section 846 of this title provides that permittees may also be required to submit a written statement of the quantities of water beneficially used. Annual reports required under this section are in addition to any specific reporting requirements in a water right permit.

(b) Annual progress reports by permittees shall be filed by April 1 after the close of the twelve month reporting period on forms available at the board's website. Provisional data and information may be used in the progress report if final data are not available by the reporting deadline. If provisional streamflow data are used in the water use report, an amended report based on final streamflow data shall be filed within one month of the date the final streamflow data are available. The board may rely upon any report, including a report based on provisional data, until and unless a revised report is filed. A failure to file a progress report is a violation of permit terms.

(c) The annual reports shall include the following information:

(1) A statement affirming compliance or non-compliance with permit terms and conditions;

(2) The construction status of the permitted project and status of current water use;

(3) The purpose(s) for which water is diverted and used. Use information to be provided includes:

(A) irrigation, including crop type and acreage;

(B) frost protection, including acres covered;

(C) heat control, including acres covered;

(D) industrial, including type of activity;

(E) stock watering, including number and type of animals;

(F) municipal, including approximate population served, and seven digit public water system number or other identifier;

(G) domestic, including number of persons served, lawn or garden area, etc., and seven digit public water system number or other identifier, if applicable;

(H) power generation, including installed capacity in kilowatts, megawatts or horsepower;

(I) recreational, including boating, fishing or other water sports;

(J) additional uses not named above, including environmental use;

(4) Information on the device or method used to calculate the amount of water diverted, as required by chapter 2.8 of division 3 this title.

(5) The amount of water taken from each point of diversion in each month (or shorter period if otherwise required) from the source, including amount directly diverted, the amount collected to storage, and the total amount of water diverted during the twelve month reporting period. Each month must contain an entry. If no diversion occurred in a given month, a "0" should be entered;

(6) The maximum rate of diversion achieved at any time during each month (or shorter period if otherwise required), if available;

(7) For permits, the annual report shall also include the measurement data required to be collected in section 933 of this chapter.

(d) If a substitute or alternative water supply, such as groundwater, contract water, or recycled water, is being used in lieu of surface water that is required to be reported under this section, the report should indicate the source and amount of substitute or alternative water used and the amount of surface water offset on a monthly basis.

(e) If water conservation efforts have resulted in a cessation or reduction in use, the report should include a description of the conservation efforts employed and indicate the extent and monthly amount of the reduction in water use due to these water conservation efforts.

NOTE: AUTHORITY CITED: SECTIONS 348(A), 1058, 1840 AND 1841, WATER CODE.
REFERENCE: SECTIONS 348(A), 1010, 1011, 1011.5 AND 1846, WATER CODE.

HISTORY

1. *New section filed 12-20-2010 as an emergency; operative 12-20-2010 (Register 2010, No. 52). Water Code section 1530 provides that the regulation shall be deemed an emergency and shall remain in effect until revised by the State Water Resources Control Board. For prior history, see Register 87, No. 10.*
2. *Amendment of section and Note filed 3-21-2016 as an emergency; operative 3-21-2016 (Register 2016, No. 13). Pursuant to Water Code section 1841(b), the amendments shall remain in effect until revised by the State Water Resources Control Board.*

§ 926. Revocation of the Certification. [Renumbered]

HISTORY

1. *Renumbering and amendment of Section 926 to Section 905 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 74, No. 48.*

§ 929. Reports of Licensee.

(a) As specified in section 847 of this title, water rights license holders are required to file reports when requested by the board. Annual reports required under this section are in addition to any specific reporting requirements in a water right license.

(b) Reports of licensee shall be filed annually by April 1 after the close of the twelve month reporting period on forms available at the board's website. Provisional data and information may be used in the report of licensee if final data are not available by the reporting deadline. If provisional streamflow data are used in the water use report, an amended report based on final streamflow data shall be filed within one month of the date the final streamflow data are available. The board may rely upon any report, including a report based on provisional data, until and unless a revised report is filed. A failure to file a licensee report is a violation of license terms.

(c) The annual reports shall include the following information:

(1) A statement affirming compliance or non-compliance with license terms and conditions;

(2) The amount of water diverted;

(3) The purpose(s) for which water is diverted and used. Use information to be provided includes:

(A) irrigation, including crop type and acreage;

(B) frost protection, including acres covered;

(C) heat control, including acres covered;

(D) industrial, including type of activity;

(E) stock watering, including number and type(s) of animals;

(F) municipal, including approximate population served, and seven digit public water system number or other identifier;

(G) domestic, including number of persons served, lawn or garden area, etc., and seven digit public water system number or other identifier, if applicable;

(H) power generation, including installed capacity in kilowatts, megawatts or horsepower;

(I) recreational, including boating, fishing or other water sports;

(J) additional uses not named above, including environmental use.

(4) Information on the device or method used to calculate the amount of water diverted, as required by chapter 2.8 of division 3 this title.

(5) The amount of water taken from the source from each point of diversion in each month (or shorter period if otherwise required), including direct diversion amount, amount collected to storage, and the total amount of water diverted during the twelve month reporting period. Each month must contain an entry. If no diversion occurred in a given month, a "0" should be entered.

(6) The maximum rate of diversion achieved at any time during each month (or shorter period if otherwise required), if available;

(7) For licenses, the annual report shall also include the measurement data required to be collected pursuant to section 933 of this chapter.

(d) If a substitute or alternative water supply, such as groundwater, contract water, or recycled water, is being used in lieu of surface water that is required to be reported under this report, the report should indicate the source and amount of substitute or alternative water used and the amount of surface water offset on a monthly basis.

(e) If water conservation efforts have resulted in a cessation or reduction in use of surface water, the report should include a description of the conservation efforts employed and indicate the extent and monthly amount of the reduction in water use due to these water conservation efforts.

NOTE: AUTHORITY CITED: SECTIONS 348(A), 1011, 1058, 1840 AND 1841, WATER CODE. REFERENCE: SECTIONS 348(A), 1010, 1011, 1011.5 AND 1846, WATER CODE.

HISTORY

1. *New section filed 12-20-2010 as an emergency; operative 12-20-2010 (Register 2010, No. 52). Water Code section 1530 provides that the regulation shall be deemed an emergency and shall remain in effect until revised by the State Water Resources Control Board.*
2. *Amendment of section and Note filed 3-21-2016 as an emergency; operative 3-21-2016 (Register 2016, No. 13). Pursuant to Water Code section 1841(b), the amendments shall remain in effect until revised by the State Water Resources Control Board.*

§ 930. Notices of Extraction and Diversion.

(a) Annual notices of groundwater extraction and diversion required pursuant to Part 5 of Division 2 of the Water Code shall be submitted to the board electronically, within six months after the close of the succeeding calendar year, on the forms available at the board's website. A failure to file an annual notice of groundwater extraction and diversion is considered non-use of water.

(b) The report shall include the following information:

(1) Type of diversion;

(2) Amount of groundwater extracted during the calendar year;

(3) Amount of surface water diverted and used, if applicable;

(4) Method of measurement;

(5) Supplemental information, if applicable.

(c) Electronic reporting of groundwater extraction and diversion does not apply to those persons reporting to local oversight agencies pursuant to section 5009 of the Water Code.

(d) As specified in Section 1070 of this title, a filing fee is required. The fee must be submitted separately from the electronic report. Filing is not complete until the board receives the filing fee.

(e) If the use of an alternative supply of water or any water conservation efforts have resulted in a cessation or reduction in use, the report should indicate the extent and amount of the reduction in water use due to water conservation efforts.

NOTE: AUTHORITY CITED: SECTIONS 348(A), 1058 AND 1529, WATER CODE.

REFERENCE: SECTIONS 1005.1, 1005.2, 1005.3, 1005.4, 1011, 1011.5, 1530, 4999, 5000, 5001, 5002, 5003 AND 5004, WATER CODE.

HISTORY

1. New section filed 12-20-2010 as an emergency; operative 12-20-2010 (Register 2010, No. 52). Water Code section 1530 provides that the regulation shall be deemed an emergency and shall remain in effect until revised by the State Water Resources Control Board.

CHAPTER 2.8. MEASURING AND MONITORING

§ 931. Definitions.

The following definitions apply to the terms as they are used in this Chapter.

(a) "Accuracy" means the measured volume relative to the actual volume, expressed as a percent, and determined at the same frequency as is specified for monitoring in section 933, subdivision (b) of this title. The percent shall be calculated as 100 x (measured value - actual value)/actual value.

(1) "Measured value" is the value indicated by the device or measurement method or determined through calculations, such as flow rate combined with duration of flow.

(2) "Actual value" is the value as determined through laboratory, design, or field testing protocols.

(b) "Board" means the State Water Resource Control Board.

(c) "Delta" means the Delta as defined in section 12220 of the Water Code and the Suisun Marsh as defined in section 29101 of the Public Resources Code.

(d) "Deputy director" means the Deputy Director for the Division of Water Rights.

(e) "Diverter" means:

(1) Any person authorized to divert water under a permit or license; or

(2) Any person required under Water Code, Division 2, Part 5.1 to file a Statement of Water Diversions and Use; or

(3) Any person authorized to divert under a registration; or

(4) To the extent authorized by federal law, the federal government for rights claimed under permits, licenses, registrations, statements of water diversion and use, and non-reserved and reserved rights on file with the board.

(f) "Diverter with multiple claimed rights" means a diverter who diverts water under more than one of the following: permits, licenses, registrations, stockpond certificates, or statements of water diversion and use.

(g) “Executive director” means the Executive Director of the board.

(h) “Measurement method” means a method capable of accounting for the rate of direct diversion, rate of collection to storage, and rate of withdrawal or release from storage where the method is likely to achieve accuracy standards comparable to those of individual measuring devices as described in section 933 subdivision (d) of this chapter.

(i) “Measuring device” means a device by which a diverter determines and records the numeric value of flow rate, velocity or volume of the water passing a designated and calibrated observation point during a specific time period. A measuring device may be a manufactured device, an on-site built device, or an in-house built device.

(j) “Place of use” means the legal location where water is used under the water right or claimed water right, subject to the following clarifications:

(1) For livestock stockpond registrations, as defined in section 1228.1, subdivision (b)(3) of the Water Code, and for stockpond certificates, as described in section 1226.1 of the Water Code, the place of use is the stockpond.

(2) For single purpose recreational ponds, the place of use is the pond.

(3) For other ponds or reservoirs, the deputy director may designate the pond or reservoir as the place of use for the purposes of compliance with this chapter.

(4) For instream flow beneficial uses and wetland preservation and enhancement dedications, the place of use is the designated reach of the stream or the wetland area where the water is applied to beneficial use.

(k) “Point of diversion” means the legal location where water is diverted from its source.

(*l*) “Qualified individual” means:

(1) For diversions greater than or equal to 100 acre-feet per year:

(A) A California-registered Professional Engineer; or

(B) A California-licensed contractor authorized by the State License Board for C-57 well drilling or C-61 Limited Specialty/D-21 Machinery and Pumps; or

(C) A person under the supervision of a California-registered Professional Engineer and employed to install, operate, and maintain water measurement and reporting devices or methods; or

(D) In the case of a right or a claimed right to divert by an agency of the federal government, a hydrologist or professional engineer experienced and trained in water measurement who is employed by the federal agency in that capacity.

(2) For diversions less than 100 acre-feet per year, a person trained and experienced in water measurement and reporting. This may include the diverter or the diverter’s agent.

(m) "Threatened, endangered, or fully protected fish" means a population of fish that belong to a species listed as threatened or endangered pursuant to the Endangered Species Act, (16 U.S.C. §§ 1531-1544), or the California Endangered Species Act, (Fish & Game Code, §§ 2050-2097) or fully protected pursuant to Fish & Game Code, § 5515.

(n) "Twelve month reporting period" has the same meaning as in section 907, subdivision (e) of this title.

(o) "Type of measuring device" means a class of measuring devices manufactured or built to perform similar functions. For example, inline flow meters, submerged orifice gates, and rectangular, v-notch, and broad crested weirs are types of measuring devices.

NOTE: AUTHORITY CITED: SECTIONS 1058, 1840 AND 1841, WATER CODE.
REFERENCE: SECTIONS 13 AND 5103, WATER CODE.

HISTORY

1. New chapter 2.8 (sections 931-938) and section filed 3-21-2016 as an emergency; operative 3-21-2016 (Register 2016, No. 13). Pursuant to Water Code section 1841(b), the regulations shall remain in effect until revised by the State Water Resources Control Board.

§ 931.5. Authority of the Delta Watermaster.

The Delta Watermaster may exercise all powers assigned to the deputy director under this chapter for any point of diversion located within the Delta. The deputy director may exercise these powers within the Delta during a vacancy in the position of Delta Watermaster or as authorized by the Delta Watermaster.

NOTE: AUTHORITY CITED: SECTIONS 1058, 1840 AND 1841, WATER CODE.
REFERENCE: SECTION 85230, WATER CODE.

HISTORY

1. New section filed 3-21-2016 as an emergency; operative 3-21-2016 (Register 2016, No. 13). Pursuant to Water Code section 1841(b), the regulation shall remain in effect until revised by the State Water Resources Control Board.

§ 932. Applicability.

(a) Except as provided in subdivision (d), the following diverters shall install and maintain a measuring device or employ a measurement method capable of measuring the rate of diversion, rate of collection to storage, the rate of withdrawal or release from storage, and the total volume of water diverted or collected to storage:

(1) Any person authorized to divert greater than 10 acre-feet of water per year under a permit or license.

(2) Any person who has previously diverted or intends to divert greater than 10 acre-feet of water per year and is required under Water Code Part 5.1 to file a Statement of Water Diversions and Use.

(3) Any person authorized to divert greater than 10 acre-feet of water per year or to have a storage facility with a capacity greater than 10 acre-feet under a registration.

(b) A diverter with multiple claimed rights shall install and maintain a measuring device or employ a measurement method for all water rights to divert from the same point of diversion or serving the same place of use if the sum of the diverter's multiple claimed rights to divert from the same point of diversion or serving the same place of use exceeds 10 acre-feet per year, or exceeds such other measurement threshold as the deputy director may establish under subdivision (d) of this section. Measurement methods employed by a diverter with multiple claimed rights shall be capable of measuring the rate of diversion, rate of collection to storage, the rate of withdrawal or release from storage, and the total volume of water diverted or collected to storage.

(c) Effective Dates.

(1) The deadlines for the installation and certification of measuring devices or the adoption of a measurement method shall be:

(A) On or before January 1, 2017, for a diverter with a right or a claimed right to divert 1000 acre-feet of water per year or more.

(B) On or before July 1, 2017, for a diverter with a right or a claimed right to divert 100 acre-feet of water per year or more.

(C) On or before January 1, 2018, for a diverter with a right or a claimed right to divert greater than 10 acre-feet of water per year.

(2) For a diverter with multiple claimed rights, the deadlines for the installation and certification of measuring devices or methods shall be as follows for each point of diversion or place of use shared by multiple claimed rights:

(A) On or before January 1, 2017, where the sum of all the multiple claimed rights to divert from the same point of diversion or to serve the same place of use is 1000 acre-feet of water per year or more.

(B) On or before July 1, 2017, where the sum of all the multiple claimed rights to divert from the same point of diversion or to serve the same place of use is 100 acre-feet of water per year or more.

(C) On or before January 1, 2018, where the sum of all the multiple claimed rights to divert from the same point of diversion or to serve the same place of use is greater than 10 acre-feet of water per year.

(D) In the event of any conflict between deadlines for a diverter with multiple claimed rights, the more stringent requirement shall control.

(d) Increasing the Measurement Threshold.

(1) Beginning January 1, 2017, the deputy director may issue orders to increase the 10 acre-feet measurement threshold of subdivision (a) in a watershed or subwatershed incrementally to or above 25 acre-feet. The deputy director may authorize an increased measurement threshold after:

(A) Considering the total monthly quantities of water diverted in relation to the monthly quantity of water available within the watershed or subwatershed; the requirements of any policy, decision or order of the board or a court; and the need for diversion and bypass information to evaluate impacts from the diversions of water to public trust resources. The deputy director may require submission of documentation on the nature and scope of diversions in the watershed prior to issuing the order; and

(B) Reviewing any relevant information submitted by affected diverters, federal, state, local, or tribal governments, or other interested parties regarding a proposed increase in reporting threshold; and

(C) Determining that the benefits of the additional reporting information at a specific measurement threshold are substantially outweighed by the cost of installing measuring devices, or employing measurement methods, or employing alternative compliance plans; and

(D) Determining that increasing the measurement threshold will not injure public trust resources or any threatened, endangered, or fully protected fish.

(2) The deputy director shall not increase the measurement threshold in a watershed or subwatershed above those established in any other regulation, policy, decision, order or other legal requirement adopted by the board, a Regional Water Quality Control Board, or a court, unless the change is authorized by such previous requirements.

(3) The deputy director may review each proposal to increase the reporting threshold on a case-by-case basis.

(4) The deputy director may authorize an increased measurement threshold for a period not to exceed five years. If changing conditions warrant, the deputy director may modify or cancel any such authorization.

(5) The deputy director shall maintain and post on the board's website a list of measurement thresholds for watersheds or subwatersheds where the measurement threshold is greater than 10 acre-feet.

(6) A decision or order issued under this section by the deputy director is subject to reconsideration under article 2 (commencing with section 1122) of chapter 4 of part 1 of division 2 of the Water Code, and all applicable sections of this title.

(e) Other Measurement and Monitoring Requirements.

(1) Any person with a water right identified in or subject to a statute, order, policy, regulation, decision, judgment or probationary designation of the board, a Regional Water Quality Control Board, or a court is responsible for meeting the terms and conditions of the statute, order, policy, regulation, decision or judgment and the requirements of this chapter. If there is any conflict or inconsistency between the measurement and monitoring requirements subject to the statute, order, policy, regulation, decision, judgment or probationary

designation and the requirements of this chapter, the more stringent requirement or requirements shall control in each instance.

(2) A permit, license, or registration holder is responsible for meeting the conditions of the permit, license, or registration and the requirements of this chapter. If there is any conflict or inconsistency between the permit, license, or registration condition for measurement and monitoring and the requirements of this chapter, the more stringent requirement or requirements shall control in each instance.

(f) Failure to maintain a measuring device, employ a measurement method, or implement an alternative compliance plan in accordance with the requirements of this chapter is a violation subject to civil liability of up to $500 per day pursuant to Water Code section 1846.

NOTE: AUTHORITY CITED: SECTIONS 1058, 1840 AND 1841, WATER CODE.

REFERENCE: SECTIONS 13, 1122, 1123, 1846 AND 5103, WATER CODE.

HISTORY

1. New section filed 3-21-2016 as an emergency; operative 3-21-2016 (Register 2016, No. 13). Pursuant to Water Code section 1841(b), the regulation shall remain in effect until revised by the State Water Resources Control Board.

§ 933. Measuring Device Requirements.

(a) Measurement Options. A diverter may choose any measuring device, or combination of devices, that meet the requirements of this section.

(b) Data.

(1) Data Recording. The measuring device shall be capable of recording the date, time, and at least one of the following: total volume of water diverted, flow rate, water velocity, or water elevation. The data shall be recorded in a format retrievable and viewable using Microsoft Excel, Microsoft Access, or other software program authorized by the deputy director. The measuring device shall be capable of recording the required information as follows:

(A) For direct diversion:

(i) On an hourly or more frequent basis for a diverter with a right or a claimed right to divert 1000 acre-feet of water per year or more.

(ii) On a daily or more frequent basis for a diverter with a right or a claimed right to divert 100 acre-feet of water per year or more.

(iii) On a weekly or more frequent basis for a diverter with a right or a claimed right to divert more than 10 acre-feet of water per year.

(B) For direct diversion by a diverter with multiple claimed rights:

(i) On an hourly or more frequent basis, where the sum of the diversions made under the claimed rights from the same point of diversion or to serve the same place of use is 1000 acre-feet of water per year or more.

(ii) On a daily or more frequent basis, where the sum of the diversions made under the claimed rights from the same point of diversion or to serve the same place of use is 100 acre-feet of water per year or more.

(iii) On a weekly or more frequent basis, where the sum of the diversions made under the claimed rights from the same point of diversion or to serve the same place of use is greater than 10 acre-feet of water per year.

(iv) In the event of any conflict between recording requirements for a diverter with multiple claimed rights from the same point of diversion or to serve the same place of use, the more stringent requirement shall control.

(C) For storage in a reservoir or pond:

(i) On an hourly or more frequent basis for a reservoir or pond with a storage capacity of 1000 acre-feet or more.

(ii) On a daily or more frequent basis for a reservoir or pond with a storage capacity of 200 acre-feet or more.

(iii) On a weekly or more frequent basis for a reservoir or pond with a storage capacity of 50 acre-feet or more and less than 200 acre-feet.

(iv) On a monthly or more frequent basis for a reservoir or pond with a storage capacity of greater than 10 acre-feet and less than 50 acre-feet.

(v) In the event of any conflict between recording requirements for a diverter with multiple claimed rights to divert to storage in a reservoir or pond, the more stringent requirement shall control.

(2) Data Submittal.

(A) Each diverter to which a measurement requirement applies shall submit the data from each measuring device to the board as required by chapter 2.7 of division 3 of this title, and within 30 days of any request or order by the board.

(B) For a reservoir subject to drawdown and refill during the collection to storage season, or that is otherwise operated in a cyclical manner, the maximum and minimum water surface elevations, the corresponding reservoir volume, and the monitoring dates shall be measured and the resulting data maintained.

(C) For each reservoir, if water is diverted or flows into the reservoir under more than one bases of right, including groundwater or water purchased under a contract, the amounts reported to the board shall be limited to the amounts covered by the water right being reported. A record of the alternative supplies entering the reservoir throughout the year shall be maintained to demonstrate that water stored is under a separate basis of right or contract.

(3) Data Retention. Each diverter shall keep records of the data from each measuring device for a period of no less than 10 years.

(4) Telemetry Requirements.

(A) This paragraph applies to any diverter who:

(i) Diverts more than 10,000 acre-feet annually; or

(ii) Owns or operates a reservoir or pond with a storage capacity of 10,000 acre-feet or more; or

(iii) Diverts during the period from June 1 through September 30, and directly diverts more than 30 cubic feet per second at any time; or

(iv) Diverts during the period from June 1 through September 30, and has claimed water right(s) to more than 20 percent of historic calculated mean monthly stream flow as measured by a stream gage with publically available records maintained by the U.S. Geological Survey, the California Department of Water Resources, the U.S. Army Corps of Engineers, or the board, or such other percentage as the deputy director or board shall determine; and any of the following conditions apply:

(a) Threatened, endangered, or fully protected fish species are present or have historically been present; or

(b) The diversion is made from a stream that is part of the board's North Coast Instream Flow Policy area; or

(c) The diversion is made from the Deer Creek, Mill Creek, or Antelope Creek watersheds of the Sacramento River watershed; or

(d) The diversion is made from the Mark West Creek, Green Valley Creek, Mill Creek, or Dutch Bill Creek watersheds of the Russian River watershed.

(B)This paragraph applies to all rights, claimed rights, or combinations of rights and claimed rights to divert from a single or shared point of diversion if the sum of such rights or claimed rights meets the criteria of subparagraphs (A)(i), (A)(iii), and (A)(iv) of this paragraph.

(C) By January 1, 2020, diverters subject to subparagraphs (A)(i), (A)(ii), or (A)(iii) of this paragraph shall provide telemetered diversion data via a public website that displays the data on at least a daily basis, and that is updated weekly, at minimum. For diverters subject to subparagraph (A)(iv), the deputy director may establish the appropriate date and percentage of stream flow for telemetering after notice and opportunity for comment. The data shall be provided to the board upon the request of the deputy director in a format retrievable and viewable using Microsoft Excel, Microsoft Access, or other software program authorized by the deputy director. The deputy director shall not require any diverter who diverts less than 10 percent of the historic calculated mean monthly stream flow to provide telemetered diversion data.

(D) The board may adjust the percent threshold of historic calculated mean monthly stream flow below 10 percent on an individual stream after notice and opportunity for comment and following a board meeting.

(c) Calculating Volume from Recorded Data. If a measuring device measures the flow rate, water velocity, or water elevation, and does not report the total volume of water diverted or delivered, the diverter shall report the conversion method used to convert the measured value to volume. The conversion method shall be approved by a qualified individual.

(1) For a measuring device that measures flow-rate, the report shall describe protocols used to record the duration of operation where volume is derived by the following formula: Volume = (flow rate) x (duration).

(2) For a measuring device that measures flow velocity only, the report shall describe protocols used to determine the cross-sectional area of flow and the duration of operation, where volume is derived by the following formula: Volume = (velocity) x (cross-section flow area) x (duration).

(3) For a measuring device that measures water elevation at the device (e.g. flow over a weir or differential elevation on either side of a device), the report shall describe protocols used to derive flow rate at the measuring device and the method or formula used to derive volume from the measured elevation value(s).

(d) Required Accuracy. The accuracy for each measuring device applies to the volume diverted or stored.

(1) A measuring device installed on or before January 1, 2016, shall be certified to be accurate to within ±15 percent by volume based on periodic testing of the installed device.

(2) A measuring device installed or replaced after January 1, 2016 that is used to measure the diversion of water shall be certified to be accurate to within:

(A) ±5 percent by volume in the laboratory if using a laboratory certification.

(B) ±10 percent by volume based on periodic testing of the installed device if using a non-laboratory certification for a diverter with a right or a claimed right greater than or equal to 100 acre-feet per year.

(C) ±15 percent by volume based on periodic testing of the installed device if using a non-laboratory certification for a diverter with a right or a claimed right greater than or equal to 10 acre-feet per year.

(3) A measuring device installed or replaced after January 1, 2016 that is used to measure the water stored in a reservoir or pond shall be certified to be accurate to within:

(A) ±10 percent by volume in based on periodic testing of the installed device for a reservoir or pond with a storage capacity of 200 acre-feet or more.

(B) ±15 percent by volume in based on periodic testing of the installed device for a reservoir or pond with a storage capacity greater than 10 acre-feet and less than 200 acre-feet.

(e) Certification of Accuracy. The accuracy of a measuring device shall be initially certified and documented as follows:

(1) For a measuring device installed prior to January 1, 2016, the accuracy required shall be initially certified and documented by field-testing performed by an individual trained in the use of relevant field-testing equipment. The results from the field testing shall be documented in a report approved by a qualified individual and shall be filed with the next subsequent water use report.

Stream gages installed and maintained by the U.S. Geological Survey or the U.S. Army Corps of Engineers do not require additional certification of the stream gage device accuracy pursuant to this section.

(2) For a measuring device installed or replaced after January 1, 2016, the accuracy shall be initially certified and documented by either:

(A) Laboratory certification prior to installation of a measuring device as documented by the manufacturer or an entity, institution or individual that tested the device following relevant industry-established protocols. Documentation shall include the manufacturer's literature or the results of laboratory testing of an individual measuring device or type of measuring device; or

(B) Non-laboratory certification after the installation of a measuring device based on periodic testing of the installed device, as documented by either:

(i) The affidavit or declaration of a qualified individual documenting the design and installation of the measuring device at a specified location; or

(ii) A report approved by a qualified individual documenting the field-testing performed on the installed measuring device by an individual trained in the use of field testing equipment.

(f) Protocols for Field-Testing and Field-Inspection and Analysis. Field-testing shall be performed for a measuring device according to the manufacturer's recommendations or design specifications and be overseen by a qualified individual. Field inspection and analysis protocols shall be performed and the results shall be approved by a qualified individual for each measuring device to demonstrate the following:

(1) The design and installation standards used for each measuring device meets the accuracy standards of subdivision (d) of this section; and

(2) The operation and maintenance protocols will ensure compliance with the accuracy standards of subdivision (d) of this section.

(g) Installation, Maintenance and Performance Requirements. A measuring device shall be installed, maintained, operated, inspected, and monitored to ensure the accuracy standards of subdivision (d) of this section are met. The installation of a measuring device shall be performed by a qualified individual.

(h) Calibration. The measuring device shall be calibrated by a qualified individual upon installation and at least once every five years thereafter. The diverter shall be responsible for more frequent calibration of measuring device(s) as necessary to ensure the accuracy requirements of subdivision (d) of this section are met.

(i) Measuring Device Location. No delivery or use of water shall occur between the point of diversion and the location of the measuring device, unless otherwise measured.

(j) Accessibility. The measuring device shall be installed in a manner such that it is readily accessible for reading, inspection, testing, repair or

replacement. The diverter shall make the measurement device reasonably available for inspection by an authorized representative of the board upon request. The diverter shall provide the board's representative with reasonable access to inspect the measuring device. Failure to provide such reasonable access is a violation of this regulation.

(k) Verification of Measuring Device. The board may conduct a field inspection or request additional information from the diverter to determine if the measuring device has been properly installed and meets the requirements of this section. Failure to timely install a measuring device or verify its accuracy is a violation of this regulation.

(*l*) Inadequate Measuring Device. If a measuring device fails to meet the accuracy requirements of subdivision (d) of this section, the diverter shall repair or replace the measuring device at their own expense to meet such requirements.

(1) Notification. A diverter shall timely notify the board in writing upon detecting that the holder's measuring device does not comply with the accuracy requirements of subdivision (d) of this section. The notification shall include the diverter's plan to take appropriate, timely corrective action to comply with the accuracy requirements of subdivision (d) of this section.

(2) Enforcement. Failure to timely repair or replace a measuring device that does not comply with the accuracy requirements of subdivision (d) of this section is a violation of this regulation.

(m) Lawful authority. Nothing in this section shall be construed to limit or modify the board's authority to obtain information under any other lawful authority.

NOTE: AUTHORITY CITED: SECTIONS 183, 1051, 1058, 1840 AND 1841, WATER CODE.
REFERENCE: SECTIONS 13, 1846 AND 5103, WATER CODE.

HISTORY

1. New section filed 3-21-2016 as an emergency; operative 3-21-2016 (Register 2016, No. 13). Pursuant to Water Code section 1841(b), the regulation shall remain in effect until revised by the State Water Resources Control Board.

§ 934. Measurement Method.

(a) A measurement method is a protocol for measuring water diversions, other than through a measuring device at each authorized point of diversion, where the method achieves the accuracy requirements of subdivision (e) of this section. The board encourages diverters on a local or regional basis to cooperate and establish a measurement method or methods to measure direct diversion, diversion to storage, and withdrawal or release from storage in an efficient and cost effective manner which meets the accuracy requirements of subdivision (e) of this section. Any measurement method shall be able to quantify the amount of water diverted under all separate priorities of rights being exercised. If the

claimed water rights included in a measurement method have different requirements under section 933, the more stringent requirement shall control for all of the claimed water rights covered by the measurement method.

(b) Minimum Standards for Measurement Method.

(1) Form and Content. A measurement method shall be prepared by a qualified individual and shall include, at a minimum, a written description that includes the following information:

(A) Name and contact information of all participants, including designation of an agent to serve as the primary contact person.

(B) Topographic or aerial map(s) showing location of participants and covered lands (including all assessor parcel numbers). The map shall conform to the mapping requirements of article 7 of chapter 2 of division 3 of this title.

(C) Description of how the measurement method is implemented to meet the requirements of this chapter.

(D) Documentation required under subdivision (f) of this section verifying the accuracy of the measurement method.

(E) Description of the permits, licenses, registrations, certificates and water right claims covered by the measurement method including for each individual right: file number, owner name, water right type, priority of diversion, monthly and annual diversion amounts, place of use, purpose of use, and alternative sources of water.

(F) Description of how the measurement method will account for each priority of right during periods of insufficient supply.

(2) Action by the deputy director. The deputy director may review measurement methods at the deputy director's discretion, and may reject measurement methods that fail to meet the requirements of this section. A measurement method shall not be authorized where any requirement of any contract, policy, order, decision, judgment, determination, or other regulatory requirement of the board, a Regional Water Quality Control Board, other state or federal agency, or a court requires that diversions be measured by a measuring device at each point of diversion.

(3) Initial Term and Renewal. The deadlines for the adoption of a measurement method shall be in accordance with subdivision (c) of section 932 of this title.

(c) Shared Measurement Point Upstream of the Delivery Point or Farm Headgate. A group of diverters may measure water diverted at a location upstream of their respective delivery points or farm headgates or at shared points of diversion if a written agreement is in place for the diverters to share a measuring device located at the shared point of diversion. Diverters using a shared measuring device under this subdivision shall report the following additional information to the board on an annual basis:

(1) The methodology used to apportion the volume of water delivered from the shared point of diversion to each downstream diverter, including how water will be apportioned among the diverters participating in the agreement during periods of insufficient supply while preventing injury to any other legal user of water or to public trust resources.

(2) The field or flow condition at each individual diverter's delivery point downstream of the point of measurement including the duration of water delivery to the individual diverter, annual water use patterns, irrigated acreage (including GIS map showing assessor's parcel number and USDA field identification number), crops planted, on-farm irrigation system, and other relevant distinctions in beneficial uses and water management practices.

(3) Consumptive use of water for each individual diverter, if available.

(d) Data.

(1) Data Recording. The measurement method shall be capable of reporting the date, time, and total amount of water diverted in accordance with the requirements of subdivision (b) of section 933 of this title. The data shall be recorded in a format retrievable and viewable using Microsoft Excel, Microsoft Access, or other software program authorized by the deputy director.

(2) Data Submittal. Each diverter or claimant shall submit data from the measurement method to the board pursuant to chapter 2.7 of division 3 of this title, or within 30 days of request of the deputy director. Water use data for each twelve month reporting period shall be submitted on a form available on the board's website with the appropriate water use report including a Progress Report by Permittee, Report of Licensee, Supplemental Statement of Water Diversion and Use, and Water Use Reports of Registration and Certificate Holders.

(e) Required Accuracy. The accuracy of the measurement method to determine the volumes of water diverted, diverted to storage, and withdrawn or released from storage shall reasonably achieve accuracy standards comparable to the standards listed in subdivision (d) of section 933 of this title for individual measuring devices. The accuracy of the measurement method shall be determined by a qualified individual.

(f) Certification of Measurement Method Accuracy. The accuracy of a measurement method shall initially be certified and documented by field-testing performed by an individual trained in the use of relevant field-testing equipment. The results from the field testing shall be documented in a report approved by a qualified individual and shall be filed with the subsequent water use report. When the measurement method applies to water diverted for agricultural use, the certification shall be based on a statistically significant number of sampling points based on crop type and field size, include field testing and measurement during multiple phases of the crop-growth cycle, include all factors which influence consumptive use of water, and include any

estimated tailwater return flows and percolation losses, where applicable. Field notes, calculations, and other materials used in the certification shall be included in the report.

(g) Operation and Performance Requirements. A measurement method shall be operated and maintained to meet the accuracy standards of subdivision (e) of this section. Field testing and re-analysis that the measurement method meets the requirements of this section shall be performed by a qualified individual upon installation, and at least once every five years thereafter.

(h) Inadequate Measurement Method. If a measurement method fails to meet the accuracy standards of subdivision (e) of this section, the measurement method shall be corrected to comply with such standards.

(1) Notification. The diverters employing a measurement method shall notify the board in writing within 30 days of finding a measurement method does not comply with the accuracy standards of subdivision (e) of this section. The notification shall include a plan to take appropriate, timely corrective action.

(2) Enforcement. Failure to correct defects or to ensure the measurement method complies with the accuracy standards of subdivision (e) of this section is a violation of this regulation.

(3) Measuring Devices Required. If defects in the measurement method are not timely corrected, measuring devices shall be installed at each point of diversion previously covered by a measurement method within 90 days.

(i) Measurement Method Duration and Renewal.

(1) A measurement method may remain in effect for a period of not more than five years, commencing from the effective date applicable to diversions subject to the plan pursuant to subdivision (c) of section 932 of this title.

(2) A diverter may renew a measurement method by resubmitting it, with or without amendment, before the method expires.

(3) The deputy director may reject a measurement method renewal for failure of the diverter(s) to implement a previous measurement method or for failure to achieve the required accuracy. Incomplete measurement method documentation, documentation that does not meet the minimum standards of this section, and lapses in measurement methods shall not relieve a diverter of the requirement to fully comply with sections 933 and 934 of this chapter.

(j) Measurement methods submitted in accordance with the provisions of this section shall be timely implemented.

NOTE: AUTHORITY CITED: SECTIONS 183, 1058, 1840 AND 1841, WATER CODE.
REFERENCE: SECTIONS 13, 1846 AND 5103, WATER CODE.

HISTORY

1. New section filed 3-21-2016 as an emergency; operative 3-21-2016 (Register 2016, No. 13). Pursuant to Water Code section 1841(b), the regulation shall remain in effect until revised by the State Water Resources Control Board.

§ 935. Alternative Compliance for a Measuring Device or Measurement Method Requirement.

(a) Alternative Compliance - Generally. In circumstances where strict compliance with sections 933 or 934 of this title is not feasible, would be unreasonably expensive, would unreasonably affect public trust uses, or would result in the waste or unreasonable use of water, a diverter may submit an alternative compliance plan.

(b) Minimum Standards - an alternative compliance plan under subdivision (a) shall meet the following minimum standards:

(1) The plan shall include the following information:

(A) The name and contact information for all diverters covered by the plan;

(B) The name and contact information for the person designated to represent all diverters covered by the plan in matters before the board;

(C) Identification of each individual water right type and priority covered by the plan;

(D) A detailed description of the area served by the plan, including all points of diversion whether used or not used, all methods of diversion, any conveyance systems, all beneficial uses of water, and all acreage served;

(E) The assessor's parcel numbers and ownership within the area covered by the plan;

(F) Identification of the proposed measurement frequency;

(G) Identification of the proposed measurement methodology;

(H) Topographic map(s) or aerial photograph(s) of the area covered by the plan that show the separate places of use authorized to be served by claimed water rights covered by the plan and showing the acreage served;

(I) An implementation schedule, including date-specific, objective milestones of plan implementation from date of filing through final implementation, including the estimated milestones for acquiring permits required for plan implementation and the estimated milestones for compliance with the California Environmental Quality Act, if required;

(J) Budget for implementation of the plan and the source(s) of financing for the plan;

(K) A list of any permits required for plan implementation, the agencies that will issue the permits, and expected dates for issuance;

(L) An affirmation, signed by all diverters covered by the plan, that the plan will be implemented in accordance with the schedule contained therein and that all claimed water rights covered by the plan will not be exercised outside the scope of the plan.

(2) The plan shall include an explanation and substantiating documentation of alternative compliance for each of the requirements of sections 933 and 934 of this title. Absent substantiation of the specific basis for reduced performance

standards, the plan shall state how compliance with sections 933 and 934 of this title will be achieved.

(3) The plan shall provide detailed documentation establishing and supporting the specific basis for claiming that strict compliance with sections 933 and 934 of this title is not feasible, would be unreasonably expensive, would unreasonably affect public trust uses, or would result in the waste or unreasonable use of water. Any claim that strict compliance is unreasonable expensive shall be accompanied by a cost analysis.

(4) The plan shall include a certification by a qualified individual that the plan is in compliance with this chapter.

(c) Filing of Alternative Compliance Plan.

(1) The alternative compliance plan shall be filed no later than the compliance deadline applicable to the diverter(s)' claim(s) of right under subdivisions (b) and (c) of section 932 of this title.

(2) The alternative compliance plan shall be filed electronically on a form available on the board's website.

(3) The alternative compliance plan shall be filed under penalty of perjury.

(d) Diverters under an alternative compliance plan shall report on plan implementation. Documentation of compliance with the timelines and other elements of the alternative compliance plan shall be filed with the applicable annual report under chapter 2.7 of this title.

(e) All plans submitted in accordance with the provisions of this section shall be timely implemented in accordance with the schedule contained therein.

(f) The deputy director may make such determinations for a plan, group of substantially similar plans, or group of plans for substantially similar projects.

(g) Alternative compliance plans received pursuant to this section will be posted on the board's website. The deputy director shall provide opportunity for comment by any interested parties.

(h) The deputy director may:

(1) Review any plan, request additional information to support a plan, and confer informally with a plan's sponsor to suggest modification in the plan;

(2) Audit any plan or any element of a plan for compliance with this chapter;

(3) Require submission of evidence of plan implementation in accordance with the schedule therein;

(4) Require changes or modification to any plan or plan component necessary to achieve compliance with this chapter,

(5) Require that any defect in a plan be corrected within a reasonable time; and

(6) Reject any plan that fails to meet the requirements of this chapter.

(j) A decision or order issued under subdivision (h) of this section is subject to reconsideration under article 2 (commencing with section 1122) of chapter 4

of part 1 of division 2 of the California Water Code, and all applicable sections of this title.

(k) Plan Duration and Renewal.

(1) An alternative compliance plan may remain in effect for a period of not more than five years, commencing from the effective date applicable to diversions subject to the plan pursuant to subdivision (c) of section 932 of this title.

(2) A diverter may renew an alternative compliance plan by resubmitting it, with or without amendment, before the plan expires.

(3) The deputy director may reject a plan renewal for failure of the diverter to implement a previous plan according to its schedule, or for failure of a previous plan to achieve the required accuracy. Incomplete plans, plans that do not meet the minimum standards of this section, and lapses in plans shall not relieve a diverter of the requirement to fully comply with sections 933 and 934 of this chapter.

NOTE: AUTHORITY CITED: SECTIONS 1058, 1840 AND 1841, WATER CODE.

REFERENCE: SECTIONS 13, 1846 AND 5103, WATER CODE.

HISTORY

1. New section filed 3-21-2016 as an emergency; operative 3-21-2016 (Register 2016, No. 13). Pursuant to Water Code section 1841(b), the regulation shall remain in effect until revised by the State Water Resources Control Board.

§ 936. Request for Additional Time.

(a) A diverter may submit a request for additional time to comply with the provisions of this Chapter on a form available on the board's website. The additional time granted by the deputy director shall not exceed 24 months per extension.

(b) Approval of a time extension request is contingent on the following:

(1) Financial considerations shall be considered only in cases where the diverter has requested agency funding, and is awaiting grant or loan award.

(2) Extensions based on other considerations are limited to:

(A) minimum time needed to access site due to weather conditions; or

(B) minimum time needed to obtain other agency permits; or

(C) minimum time needed to comply with construction time periods set in other agency permits; or

(D) unforeseen circumstances.

(c) All time extension requests shall be accompanied by documentation of grant or loan request or agency permit requests, as applicable. Funding and/or permit approval documents shall be submitted to the deputy director within 30 days of receipt. Time extension requests based on unforeseen circumstances shall be accompanied by a showing of good cause and a showing that all

reasonable efforts have been made to comply with the timelines established in the subdivision (c) of section 932 of this title.

(d) All time extension requests shall be accompanied by a plan documenting the additional time needed to comply with the provisions of this chapter. The plan shall describe the interim measurement practices the diverter will implement while diligently pursuing compliance with this chapter.

NOTE: AUTHORITY CITED: SECTIONS 1058, 1840 AND 1841, WATER CODE.

REFERENCE: SECTIONS 13, 1846 AND 5103, WATER CODE.

HISTORY

1. New section filed 3-21-2016 as an emergency; operative 3-21-2016 (Register 2016, No. 13). Pursuant to Water Code section 1841(b), the regulation shall remain in effect until revised by the State Water Resources Control Board.

§ 937. Report of Water Measuring Device.

(a) Report - Filing Requirements. A report of water measuring device shall be filed electronically on a form available on the board's website.

(1) For measuring devices installed on or before January 1, 2016, a diverter shall submit a report of water measuring device to the board with the first water use report filed after January 1, 2017.

(2) For measuring devices installed after January 1, 2016, a diverter shall submit a report of water measuring device to the board with the first water use report submitted after installation of the device.

(3) After the initial report has been submitted, the diverter shall provide the board with a report of water measuring device at five year intervals.

(4) The diverter shall submit a report of water measuring device to the board within 30 days of installation or calibration of a new or replacement measuring device.

(5) The diverter shall submit a report of water measuring device to the board within 30 days of request from the board.

(b) Form - Content. The report of water measuring device shall contain the following information, as applicable:

(1) Name of diverter.

(2) Contact information for the person testing the performance of the device, including email address.

(3) Water right identification number, if assigned.

(4) Type of measuring device.

(5) Make, model number and serial number of the measuring device.

(6) Type of recording device.

(7) Make, model number and serial number of the recording device.

(8) Units of measurement.

(9) The date of installation.

(10) Certification of accuracy.

(11) Name of the person who installed the measuring device.

(12) Date of most recent calibration or recalibration of the measuring device.

(13) Maintenance schedule for the measuring device and the recording device.

NOTE: AUTHORITY CITED: SECTIONS 1058, 1840 AND 1841, WATER CODE.

REFERENCE: SECTIONS 13, 1846 AND 5103, WATER CODE.

HISTORY

1. New section filed 3-21-2016 as an emergency; operative 3-21-2016 (Register 2016, No. 13). Pursuant to Water Code section 1841(b), the regulation shall remain in effect until revised by the State Water Resources Control Board.

§ 938. Compliance.

Failure to meet the requirements of this Chapter is violation subject to civil liability of up to $500 per day pursuant to Water Code section 1846.

NOTE: AUTHORITY CITED: SECTIONS 1058, 1840 AND 1841, WATER CODE.

REFERENCE: SECTIONS 13 AND 1846, WATER CODE.

HISTORY

1. New section filed 3-21-2016 as an emergency; operative 3-21-2016 (Register 2016, No. 13). Pursuant to Water Code section 1841(b), the regulation shall remain in effect until revised by the State Water Resources Control Board.

CHAPTER 3. DETERMINATION OF RIGHT TO THE USE OF WATER

Article 1. Definitions

§ 940. Board.

"Board" when used in this subchapter means the State Water Resources Control Board.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

HISTORY

1. Repealer of Sections 950 through 983, 989, 992, 993 and 996; new Sections 940 and 950 through 969 filed 6-12-56; effective thirtieth day thereafter (Register 56, No. 12).

2. Amendment filed 12-7-67 as organizational and procedural; effective upon filing (Register 67, No. 49).

3. Amendment filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

Article 2. Adjudications Under Water Code Sections 2500 Through 2900

§ 945. Petition.

A petition requesting a determination of the rights to water from a stream system, pursuant to Water Code Section 2525, shall be submitted to the board and shall contain the following:

(a) The petitioner's name and address.

(b) A description of the stream system of which the determination of all rights to water is sought.

(c) A statement of the nature of the right or rights claimed by the petitioner.

(d) A statement of facts and conditions showing why the public interest and necessity will be served by a determination of all rights to water of the stream system.

(e) Petitioner's signature.

If a petition is signed by more than one petitioner, the information required by (a) and (c) above shall be provided as to each petitioner.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 2501 AND 2525, WATER CODE.

HISTORY

1. Renumbering and amendment of Section 950 to Section 945 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history of Section 950, see Registers 67, No. 49 and 56, No. 12.

§ 946. Public Interest and Necessity.

In making its determination pursuant to Water Code Section 2525 that the public interest and necessity will be served by a determination of the water rights involved, the board will consider, together with other relevant facts and conditions, the following:

(a) The degree to which the waters of the stream system are fully used.

(b) Existence of uncertainty as to the relative priorities of rights to the use of waters of the stream system.

(c) Unsuitability of less comprehensive measures, such as private litigation or agreements, to achieve certainty of rights to the use of waters of the stream system.

(d) Need for a system-wide decree or watermaster service, or both, to assure fair and efficient allocation of the waters of the stream system.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTION 2525, WATER CODE.

HISTORY

1. New section filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

§ 947. Proof of Claim of Water Right.

(a) Proofs of claims shall be typewritten or legibly written in ink upon forms furnished by the board. The proofs shall be certified as true under penalty of perjury in accordance with Section 2105.5 of the Code of Civil Procedure.

(b) A separate proof shall be filed for each purpose of use, including public trust use, except that water for incidental domestic, stock watering and recreational use may be claimed in the same proof with any other use, and except that public trust uses must be claimed in a single proof.

(c) A separate proof shall be filed for each diversion from the stream, except where one or more supplemental diversions are used as a convenience to convey water from the same source, under the same claim of right, to the same place of use.

(d) Whenever a claim is based upon a pending application, permit or license to appropriate water, pursuant to the Water Commission Act or the Water Code, a single proof of claim may be submitted.

(e) Where water is supplied by a public agency or private business or non-profit association, the required proofs shall be filed by the agency or association covering all water diverted by such entity from the source. Those supplied with water need not submit separate proofs, but may do so if they claim separate rights.

(f) Where a water right is held by two or more parties and the interests in said water right have been divided among the respective parties, each party shall file a separate proof covering his individual interest in the water right.

(g) Where a water right is held by two or more parties and the interests in said water right are undivided, one proof may be filed to cover the claim of the several parties.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 2501, 2526, 2528, 2553, 2555, 2575 AND 2576, WATER CODE; AND NATIONAL AUDUBON SOCIETY V. SUPERIOR COURT OF ALPINE COUNTY, 33 CAL.3D 419, 189 CAL.RPTR. 346, 658 P.2D 709 (1983).

HISTORY

1. Renumbering and amendment of Sections 951-957 to Section 947 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 67, No. 49.

§ 948. Signature of Deponent Claimant.

The proof shall be signed by the claimant or authorized agent. The board shall presume that any person other than a claimant, who signs a proof of claim is an authorized agent. The presumption is overcome if the board may be charged with actual knowledge that the person signing has no authority to do so.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 2553, 2554, 2555, 2575 AND 2576, WATER CODE.

HISTORY

1. Renumbering and amendment of Section 961 to Section 948 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 56, No. 12.

§ 949. Objections.

Objections to the board's report, abstract of claims or water right, or preliminary order of determination shall be submitted in writing and shall state the specific objections and the grounds upon which the objections are based.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 2604 AND 2628, WATER CODE.

HISTORY

1. *Renumbering and amendment of Section 962 to Section 949 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 77, No. 10.*

§ 950. Other Applicable Regulations.

The following provisions of Article 11 of Subchapter 2 apply to hearings held in connection with adjudication of water rights, except that all references to "applicants," "petitioners" or "protestants" shall be read as referring to claimants, other holders of rights included in the preliminary order of determination and objectors in the adjudication proceeding: Section 761, Procedure at Hearings; Section 762, Witnesses and Exhibits; Section 763, Subpoenas; Section 766, Failure to Appear.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 183, 1051 AND 2650, WATER CODE.

HISTORY

1. *Renumbering and amendment of former Section 988 to Section 950 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).*
2. *Amendment filed 12-7-67 as procedural and organizational; effective upon filing (Register 67, No. 49).*
3. *Renumbering and amendment of former Section 950 to Section 945, and new section 950 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).*
4. *Editorial correction amending section (Register 2005, No. 17).*

§ 951. Inspection of Records.

No proofs or documents relating thereto shall be taken from the custody of the board prior to filing same with the clerk of the superior court, as provided in Section 2750 of the Water Code. Access to the same, and inspection thereof, will be permitted during regular office hours.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 2625, 2626 AND 2750, WATER CODE.

HISTORY

1. *Amendment filed 12-7-67 as organizational and procedural; effective upon filing (Register 67, No. 49). For prior history, see Register 56, No. 12.*
2. *Renumbering and amendment of former Section 951 to Section 947, and renumbering and amendment of Section 969 to Section 951 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).*

§ 952. Separate Proof for Each Purpose of Use. [Renumbered]

History

1. *Amendment filed 12-7-67 as organizational and procedural; effective thirtieth day thereafter (Register 67, No. 49). For prior history, see Register 56, No. 12.*
2. *Renumbering and amendment of former Section 952 to Section 947 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).*

§ 953. Separate Proof for Each Diversion. [Renumbered]

History

1. *Renumbering and amendment of Section 953 to Section 947 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 56, No. 12.*

§ 954. Single Proof for Claim Initiated Under the Water Commission Act or Water Code. [Renumbered]

History

1. *Renumbering and amendment of Section 954 to Section 947 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 56, No. 12.*

§ 955. Claims to Water Supplied by District or Water Company. [Renumbered]

History

1. *Renumbering and amendment of Section 955 to Section 947 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 56, No. 12.*

§ 956. Divided Interests. [Renumbered]

History

1. *Renumbering and amendment of Section 956 to Section 947 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 56, No. 12.*

§ 957. Undivided Interests. [Renumbered]

History

1. *Renumbering and amendment of Section 957 to Section 947 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 56, No. 12.*

§ 958. General Requirements for Proofs of Claims. [Repealed]

History

1. *New section (renumbered from former Section 990(a) amended) filed 6-12-56; effective thirtieth day thereafter (Register 56, No. 12).*

2. Amendment of subsections (b) and (c) filed 4-25-72; effective thirtieth day thereafter (Register 72, No. 18).
3. Repealer filed 3-4-77; effective thirtieth day thereafter (Register 77, No. 10).

§ 959. Specific Requirements for Irrigation Proofs. [Repealed]

HISTORY

1. New section (renumbered from former Section 990(b), (c) and (d), amended) filed 6-12-56; effective thirtieth day thereafter (Register 56, No. 12).
2. Amendment filed 12-7-67 as organizational and procedural; effective upon filing (Register 67, No. 49).
3. Repealer and new section filed 4-25-72; effective thirtieth day thereafter (Register 72, No. 18).
4. Repealer filed 3-4-77; effective thirtieth day thereafter (Register 77, No. 10).

§ 960. Uses Other Than Irrigation. [Repealed]

HISTORY

1. Amendment of subsection (b) filed 4-25-72; effective thirtieth day thereafter (Register 72, No. 18). For prior history, see Register 56, No. 12.
2. Repealer filed 3-4-77; effective thirtieth day thereafter (Register 77, No. 10).

§ 961. Signature of Deponent. [Renumbered]

HISTORY

1. Renumbering and amendment of Section 961 to Section 948 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 56, No. 12.

§ 962. Objections. [Renumbered]

HISTORY

1. New section (renumbered from former Section 991 amended) filed 6-12-56; effective thirtieth day thereafter (Register 56, No. 12).
2. Amendment filed 12-7-67 as organizational and procedural; effective upon filing (Register 67, No. 49).
3. Amendment filed 3-4-77; effective thirtieth day thereafter (Register 77, No. 10).
4. Renumbering and amendment of Section 962 to Section 749 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

§ 963. Subpoenas. [Repealed]

HISTORY

1. Amendment filed 12-7-67 as organizational and procedural; effective upon filing (Register 67, No. 49). For prior history, see Register 56, No. 12.
2. Amendment filed 12-15-72; effective thirtieth day thereafter (Register 72, No. 51).
3. Repealer filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

§ 964. Procedure at Hearings. [Repealed]

History

1. *Repealer filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10). For prior history, see Register 56, No. 12.*

§ 965. Official Notice. [Repealed]

History

1. *Amendment filed 12-7-67 as organizational and procedural; effective upon filing (Register 67, No. 49). For prior history, see Register 56, No. 12.*
2. *Repealer filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).*

§ 966. Evidence by Reference. [Repealed]

History

1. *Amendment filed 12-7-67 as organizational and procedural; effective upon filing (Register 67, No. 49). For prior history, see Register 56, No. 12.*
2. *Repealer filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).*

§ 967. Oral Arguments and Briefs. [Repealed]

History

1. *Amendment filed 12-7-67 as organizational and procedural; effective upon filing (Register 67, No. 49). For prior history, see Register 56, No. 12.*
2. *Repealer filed 1-16-87, effective thirtieth day thereafter (Register 87, No. 10).*

§ 968. Attorneys or Agents. [Repealed]

History

1. *New section (renumbered from former Section 994 amended) filed 6-12-56; effective thirtieth day thereafter (Register 56, No. 12).*
2. *Amendment filed 12-7-67 as organizational and procedural; effective upon filing (Register 67, No. 49).*
3. *Repealer filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).*

§ 969. Inspection of Records. [Renumbered]

History

1. *New section (renumbered from former Section 995 amended) filed 6-12-56; effective thirtieth day thereafter (Register 56, No. 12).*
2. *Amendment filed 12-7-67 as organizational and procedural; effective upon filing (Register 67, No. 49).*
3. *Renumbering and amendment of Section 961 to Section 951 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).*

CHAPTER 4. RECORDATION OF WATER EXTRACTIONS AND DIVERSIONS

Article 1. Notices of Water Extractions and Diversions

§ 1000. Use of Forms.

Notices filed with the board pursuant to Part 5, Division 2, of the Water Code shall be submitted upon forms furnished by the board.

NOTE: AUTHORITY CITED: SECTIONS 1052 AND 1058, AND 5002 AND 5008, WATER CODE. ISSUING AGENCY: STATE WATER RIGHTS BOARD. ADDITIONAL AUTHORITY AND REFERENCE CITED: SECTIONS 5006 AND 5007, WATER CODE.

HISTORY

1. New Subchapter 4 (ss 1000, 1001, 1002, 1006, 1010, 1011, 1015, 1020, 1021 and 1022) filed 10-18-56; effective thirtieth day thereafter (Register 56, No. 19).

2. Repealer of Sections 1000, 1001, 1005, 1006 1010, 1011 and 1015, and new Sections 1000, 1001 and 1002, filed 12-27-57; effective thirtieth day thereafter (Register 58, No. 1).

3. Amendment filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

§ 1001. Separate Notices.

A separate First Notice and Annual Notice shall be filed for each well or surface diversion.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 5101, 5102 AND 5104, WATER CODE.

HISTORY

1. New Note filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

§ 1002. Contents of Notices.

The notices shall contain the available information required by the forms provided by the board and shall be prepared in accordance with the instructions contained therein.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTION 5103, WATER CODE.

HISTORY

1. Amendment filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

Article 2. Fees

§ 1010. Filing Fees.

Notices of ground water extraction or surface water diversions shall be accompanied by a filing fee required by section 1070 of this division.

NOTE: AUTHORITY CITED: SECTIONS 1058, 1530 AND 5006, WATER CODE.

REFERENCE: SECTIONS 1529 AND 5006, WATER CODE.

HISTORY

1. Renumbering from Section 1020, and amendment filed 12-27-57; effective thirtieth day thereafter (Register 58, No. 1).

2. Amendment filed 11-25-59; effective thirtieth day thereafter (Register 59, No. 20).

3. Amendment filed 5-24-74; designated effective 7-1-74 (Register 74, No. 21).
4. Amendment filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).
5. Amendment of section and Note filed 12-23-2003 as an emergency; operative 1-1-2004 (Register 2003, No. 52). Pursuant to Water Code section 1530 this rulemaking action remains in effect until revised by the State Water Resources Control Board.

§ 1011. Effect of Failure to Pay Filing Fees.

Notices not accompanied by the required fees will not be accepted for filing.

NOTE: AUTHORITY CITED: SECTIONS 1058 AND 5006, WATER CODE.
REFERENCE: SECTION 5006, WATER CODE.

HISTORY

1. Renumbering from Section 1021 filed 12-27-57; effective thirtieth day thereafter (Register 58, No. 1).
2. Amendment filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

§ 1012. Investigation Charges.

Requests for investigations and determinations under Section 5007 of the Water Code shall be accompanied by a payment of twenty-five dollars ($25). The board will then estimate the total cost of the investigation and determination, and will send a statement thereof to the applicant. Any part of such estimate in excess of twenty-five dollars ($25) must be paid before the investigation is commenced. The estimated total cost of the investigation and determination shall not be exceeded by more than 20 percent without prior notice to the applicant and until his written consent to proceed is obtained and such further payment as the board requires is received.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: SECTION 5007, WATER CODE.

HISTORY

1. Renumbering from Section 1022 filed 12-27-57; effective thirtieth day thereafter (Register 58, No. 1).
2. Amendment filed 10-25-65; effective thirtieth day thereafter (Register 65, No. 20).
3. Amendment filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).
4. Editorial correction amending section (Register 2005, No. 17).

Article 3. Investigation and Determination of Facts

§ 1020. Notice of Investigation.

After a request for an investigation and determination of facts pursuant to Section 5007 of the Water Code has been received and the estimated cost has been paid, all persons known to have a direct interest in the matter will be notified of the pendency of the investigation and that they are allowed 30 days within which to submit relevant information concerning the facts to be determined.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTION 5007, WATER CODE.

HISTORY

1. New Article 3 (Sections 1020 through 1023) filed 10-25-65; effective thirtieth day thereafter (Register 65, No. 20).

2. Amendment filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

§ 1021. Service of Proposed Findings.

After the board's investigation has been completed, a copy of the proposed findings will be mailed to the person who filed the notice, the person who requested the investigation, and any other person who has submitted information. The proposed findings will be accompanied by a notice that objections to them may be filed within 60 days. The board will specify the persons on whom a copy of any objections shall be served.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTION 5007, WATER CODE.

HISTORY

1. New noted filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

§ 1022. Hearing.

If deemed advisable by the board, a hearing will be held to determine any facts which are in dispute. The provisions of Subchapter 2, Article 11, insofar as they are applicable, shall govern hearings held pursuant to this subchapter.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTION 5007, WATER CODE.

HISTORY

1. Renumbering and amendment of former Section 1022 to Section 1023, and new Section 1022 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

§ 1023. Further Procedure.

After the time for filing objections has expired, and after any necessary hearing has been held, a draft of the board's finding and determinations will be prepared and mailed to interested persons who have appeared in the proceeding together with a notice of the time when final action will be taken, which time will not be less than 30 days from the date of mailing the notice. Exceptions to the draft may be filed and served on opposing parties prior to the time stated in the notice and will be considered by the board in making its final determination. The board may cause such further investigation to be made as it deems necessary and for such purpose may defer making its final determination.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTION 5007, WATER CODE.

History

1. Renumbering and amendment of former Section 1023 to Section 1024, and renumbering and amendment of Section 1022 to Section 1023 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

§ 1024. Shortening of Time.

The board may for cause and consistent with Section 5007 of the Water Code shorten any of the times stated in this article.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 1020, 1021, 1022 AND 1023, WATER CODE.

History

1. Renumbering and amendment of former Section 1023 to Section 1024 filed 1-16-87; effective thirtieth day thereafter (Register 87, No. 10).

CHAPTER 4.5. PROCEDURES FOR PROTECTING INSTREAM BENEFICIAL USES [REPEALED]

NOTE: AUTHORITY CITED: SECTIONS 185, 1058 AND 1252, WATER CODE.

REFERENCE: SECTIONS 174, 183, 275, 1051, 1243, 1243.5, 1253, 1255, 1257, 13140, 13142 AND 13170, WATER CODE; AND SECTIONS 21000, ET SEQ., PUBLIC RESOURCES CODE.

History

1. New Subchapter 4.5 (Articles 1-3, Sections 1050-1060, not consecutive) filed 5-29-81; effective thirtieth day thereafter (Register 81, No. 22).

2. Repealer of Subchapter 4.5 (Sections 1050-1060, not consecutive) filed 9-27-85; effective thirtieth day thereafter (Register 85, No. 40).

CHAPTER 5. FEES

§ 1061. Definitions.

(a) "Annual fee" means a fee for the twelve-month fiscal year beginning July 1 and ending June 30, that is described in sections 1063, 1065, 1066, 1067, and 3833.1 of this title, and that the State Board of Equalization is required to collect pursuant to Water Code section 1537.

(b) "Assessment" means an amount owing as included in a notice of determination or similar billing document issued by the State Board of Equalization to a person identified by the board as owing an annual fee, unpaid fee, or expense.

(c) "Board" means the State Water Resources Control Board.

(d) "Fee payer" means any person liable for the payment of fees or expenses collected pursuant to this chapter.

(e) "Person" means a person, individual, trust, joint stock company, business concern, firm, association, organization, partnership, business trust, corporation, limited liability company, company, or entity or organization capable of holding an interest in real property in California. "Person" also includes a city, county, city and county, district, commission, the state or any

department, agency, or political subdivision thereof, interstate body, and the United States, to the extent authorized by federal law.

(f) "Unpaid fee" means any fee provided for under this chapter or chapter 28 of this title that was not timely paid to the board and that the State Board of Equalization is required to collect pursuant to Water Code section 1537.

NOTE: AUTHORITY CITED: SECTIONS 1058 AND 1530, WATER CODE.

REFERENCE: SECTIONS 19, 25, 1252.5, 1525, 1536, 1537 AND 13050(C), WATER CODE.

HISTORY

1. New chapter 5 (sections 1061-1078) and section filed 12-23-2003 as an emergency; operative 1-1-2004 (Register 2003, No. 52). Pursuant to Water Code section 1530 this rulemaking action remains in effect until revised by the State Water Resources Control Board. For prior history of chapter 5, sections 2001-2022, see Register 81, No. 36.

§ 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 $498,665, 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 $100 plus $1.00 for every 100 acre-feet of water the applicant diverts to underground storage under the permit in excess of 10,000 acre-feet. 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.

HISTORY

1. *New section filed 12-23-2003 as an emergency; operative 1-1-2004 (Register 2003, No. 52). Pursuant to Water Code section 1530 this rulemaking action remains in effect until revised by the State Water Resources Control Board.*
2. *Amendment of subsections (a)(1) and (b) and new subsection (c) filed 10-14-2004 as an emergency; operative 10-14-2004 (Register 2004, No. 42). Pursuant to Water Code section 1530, this rulemaking action remains in effect until revised by the State Water Resources Control Board.*
3. *Redesignation and amendment of former subsection (a)(1) as new subsection (a)(1)(A) and new subsection (a)(1)(B) filed 10-21-2005 as an emergency; operative 10-21-2005. Water Code section 1530 provides that this filing shall be deemed an emergency and shall remain in effect until revised by the State Water Resources Control Board (Register 2005, No. 42).*
4. *Editorial correction of History 3 (Register 2008, No. 45).*
5. *Amendment of subsection (a)(1)(A), new subsection (a)(1)(C) and amendment of Note filed 11-5-2008 as an emergency; operative 11-5-2008. Water Code section 1530 provides that this filing shall be deemed an emergency and shall remain in effect until revised by the State Water Resources Control Board (Register 2008, No. 45).*
6. *Editorial correction of subsection (a)(1)(A) (Register 2009, No. 28).*
7. *Amendment of subsection (a)(1)(A) filed 10-21-2009 as an emergency; operative 10-21-2009. Water Code section 1530 provides that this filing shall be deemed an emergency and shall remain in effect until revised by the State Water Resources Control Board (Register 2009, No. 43).*
8. *Amendment of subsection (a)(1)(A) filed 11-17-2010 as an emergency; operative 11-17-2010 (Register 2010, No. 47). Water Code section 1530 provides that the regulation shall be deemed an emergency and shall remain in effect until revised by the State Water Resources Control Board.*

9. Amendment of subsection (a)(1)(A) filed 10-20-2011 as an emergency; operative 10-20-2011. Water Code section 1530 provides that the regulation shall be deemed an emergency and shall remain in effect until revised by the State Water Resources Control Board (Register 2011, No. 42).

10. Amendment of subsection (a)(1)(A) filed 11-14-2012 as an emergency; operative 11-14-2012. Water Code section 1530 provides that the regulation shall be deemed an emergency and shall remain in effect until revised by the State Water Resources Control Board (Register 2012, No. 46).

11. Amendment of subsection (a)(1)(A) filed 10-31-2013 as an emergency; operative 10-31-2013. Water Code section 1530 provides that the regulations shall be deemed an emergency and shall remain in effect until revised by the State Water Resources Control Board (Register 2013, No. 44).

12. Amendment of subsection (a)(1)(A) filed 10-30-2014 as an emergency; operative 10-30-2014. Water Code section 1530 provides that the regulation shall be deemed an emergency and shall remain in effect until revised by the State Water Resources Control Board (Register 2014, No. 44).

13. Amendment of subsection (a)(1)(A) filed 10-28-2015 as an emergency; operative 10-28-2015. Water Code section 1530 provides that the regulatory amendments shall be deemed an emergency and shall remain in effect until revised by the State Water Resources Control Board (Register 2015, No. 44).

14. Amendment of subsections (a)(1)(A) and (a)(1)(C), new subsections (a)(1)(D)-(E) and amendment of subsection (c) and Note filed 1-15-2016 as an emergency; operative 1-15-2016. Water Code section 1530 provides that the regulation shall be deemed an emergency and shall remain in effect until revised by the State Water Resources Control Board (Register 2016, No. 3).

§ 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:

(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 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 AND1530, WATER CODE.
REFERENCE: SECTIONS 1525, 1536 AND 1537, WATER CODE.

HISTORY

1. *New section filed 12-23-2003 as an emergency; operative 1-1-2004 (Register 2003, No. 52). Pursuant to Water Code section 1530 this rulemaking action remains in effect until revised by the State Water Resources Control Board.*
2. *Amendment of subsection (c) filed 10-21-2005 as an emergency; operative 10-21-2005. Water Code section 1530 provides that this filing shall be deemed an emergency and shall remain in effect until revised by the State Water Resources Control Board (Register 2005, No. 42).*
3. *Editorial correction of History 2 (Register 2008, No. 45).*

§ 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 $6,264.

(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 $498,665.

(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 or small irrigation 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.

NOTE: AUTHORITY CITED: SECTIONS 1058 AND 1530, WATER CODE.

REFERENCE: SECTIONS 386, 1525 AND 1535, WATER CODE.

HISTORY

1. *New section filed 12-23-2003 as an emergency; operative 1-1-2004 (Register 2003, No. 52). Pursuant to Water Code section 1530 this rulemaking action remains in effect until revised by the State Water Resources Control Board.*
2. *Amendment filed 10-14-2004 as an emergency; operative 10-14-2004 (Register 2004, No. 42). Pursuant to Water Code section 1530, this rulemaking action remains in effect until revised by the State Water Resources Control Board.*
3. *Repealer and new subsection (a)(1), new subsection (a)(1)(A), subsection renumbering, amendment of newly designated subsection (a)(1)(A)(ii) and new subsection (a)(4) filed 10-21-2005 as an emergency; operative 10-21-2005. Water Code section 1530 provides that this filing shall be deemed an emergency and shall remain in effect until revised by the State Water Resources Control Board (Register 2005, No. 42).*
4. *Editorial correction of History 3 (Register 2008, No. 45).*
5. *Amendment of subsections (a)(1)(A) and (a)(1)(A)(ii) filed 11-5-2008 as an emergency; operative 11-5-2008. Water Code section 1530 provides that this filing shall be deemed an emergency and shall remain in effect until revised by the State Water Resources Control Board (Register 2008, No. 45).*
6. *Amendment of subsections (a)(1)(A) and (a)(1)(A)(ii) filed 10-21-2009 as an emergency; operative 10-21-2009. Water Code section 1530 provides that this filing shall be deemed an emergency and shall remain in effect until revised by the State Water Resources Control Board (Register 2009, No. 43).*
7. *Amendment of subsections (a)(1)(A) and (a)(1)(A)(ii) filed 11-17-2010 as an emergency; operative 11-17-2010 (Register 2010, No. 47). Water Code section 1530 provides that the regulation shall be deemed an emergency and shall remain in effect until revised by the State Water Resources Control Board.*
8. *Amendment of subsections (a)(1)(A) and (a)(1)(A)(ii) filed 10-20-2011 as an emergency; operative 10-20-2011. Water Code section 1530 provides that the regulation shall be*

deemed an emergency and shall remain in effect until revised by the State Water Resources Control Board (Register 2011, No. 42).

9. *Amendment of subsections (a)(1)(A), (a)(1)(A)(ii) and (a)(4) filed 11-14-2012 as an emergency; operative 11-14-2012. Water Code section 1530 provides that the regulation shall be deemed an emergency and shall remain in effect until revised by the State Water Resources Control Board (Register 2012, No. 46).*
10. *Amendment of subsection (a)(1)(A) and (a)(1)(A)(ii) filed 10-31-2013 as an emergency; operative 10-31-2013. Water Code section 1530 provides that the regulations shall be deemed an emergency and shall remain in effect until revised by the State Water Resources Control Board (Register 2013, No. 44).*
11. *Amendment of subsections (a)(1)(A) and (a)(1)(A)(ii) filed 10-30-2014 as an emergency; operative 10-30-2014. Water Code section 1530 provides that the regulation shall be deemed an emergency and shall remain in effect until revised by the State Water Resources Control Board (Register 2014, No. 44).*
12. *Amendment of subsections (a)(1)(A) and (a)(1)(A)(ii) filed 10-28-2015 as an emergency; operative 10-28-2015. Water Code section 1530 provides that the regulatory amendments shall be deemed an emergency and shall remain in effect until revised by the State Water Resources Control Board (Register 2015, No. 44).*

§ 1065. Annual Fees for Petitions or Requests.

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 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.

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

(b) 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.

(c) 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.

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

NOTE: AUTHORITY CITED: SECTIONS 1058 AND 1530, WATER CODE.
REFERENCE: SECTIONS 1525, 1536 AND 1537, WATER CODE.

HISTORY

1. *New section filed 12-23-2003 as an emergency; operative 1-1-2004 (Register 2003, No. 52). Pursuant to Water Code section 1530 this rulemaking action remains in effect until revised by the State Water Resources Control Board.*
2. *Amendment of section heading, first paragraph and subsections (a) and (c) filed 10-21-2005 as an emergency; operative 10-21-2005. Water Code section 1530 provides*

that this filing shall be deemed an emergency and shall remain in effect until revised by the State Water Resources Control Board (Register 2005, No. 42).

3. Editorial correction of History 2 (Register 2008, No. 45).

§ 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. 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 $0.063 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.

HISTORY

1. New section filed 12-23-2003 as an emergency; operative 1-1-2004 (Register 2003, No. 52). Pursuant to Water Code section 1530 this rulemaking action remains in effect until revised by the State Water Resources Control Board.

2. Amendment of subsections (a), (b)(2) and (b)(3) filed 10-14-2004 as an emergency; operative 10-14-2004 (Register 2004, No. 42). Pursuant to Water Code section 1530,

this rulemaking action remains in effect until revised by the State Water Resources Control Board.

3. *Amendment of section (a) filed 10-21-2005 as an emergency; operative 10-21-2005. Water Code section 1530 provides that this filing shall be deemed an emergency and shall remain in effect until revised by the State Water Resources Control Board (Register 2005, No. 42).*
4. *Editorial correction of History 3 (Register 2008, No. 45).*
5. *Amendment of subsection (a) filed 10-21-2009 as an emergency; operative 10-21-2009. Water Code section 1530 provides that this filing shall be deemed an emergency and shall remain in effect until revised by the State Water Resources Control Board (Register 2009, No. 43).*
6. *Amendment of subsection (a) filed 11-17-2010 as an emergency; operative 11-17-2010 (Register 2010, No. 47). Water Code section 1530 provides that the regulation shall be deemed an emergency and shall remain in effect until revised by the State Water Resources Control Board.*
7. *Amendment of subsection (a) filed 10-20-2011 as an emergency; operative 10-20-2011. Water Code section 1530 provides that the regulation shall be deemed an emergency and shall remain in effect until revised by the State Water Resources Control Board (Register 2011, No. 42).*
8. *Amendment of subsection (a) filed 10-31-2013 as an emergency; operative 10-31-2013. Water Code section 1530 provides that the regulations shall be deemed an emergency and shall remain in effect until revised by the State Water Resources Control Board (Register 2013, No. 44).*
9. *Amendment of subsection (a) filed 10-30-2014 as an emergency; operative 10-30-2014. Water Code section 1530 provides that the regulation shall be deemed an emergency and shall remain in effect until revised by the State Water Resources Control Board (Register 2014, No. 44).*
10. *Amendment of subsection (a) filed 10-28-2015 as an emergency; operative 10-28-2015. Water Code section 1530 provides that the regulatory amendments shall be deemed an emergency and shall remain in effect until revised by the State Water Resources Control Board (Register 2015, No. 44).*

§ 1067. Water Leases.

(a) A person who files an application for approval of a water lease agreement pursuant to Water Code section 1025.5 shall pay to the board a filing fee equal to an amount calculated in accordance with the fee schedule in section 1062 of this chapter, except that the fee shall be based on the amount of water proposed to be leased over the entire term of the lease instead of the amount proposed to be diverted per year, and the fee shall not be subject to any limit imposed under that section. The filing fee shall constitute all annual fees for the term of the lease.

(b) A person who provides notice of a water lease to the board shall pay to the State Board of Equalization an annual fee determined by the board pursuant to this subdivision.

(1) When a water district submits a notice to the board under Water Code section 1025, the water district shall include in the notice sufficient information for the board to determine the maximum amount of water to be leased for each year the lease will be in effect. The board shall determine the annual fees for the lease in an amount equal to the fee set forth in section 1062 of this chapter for the first year of the lease, and the fee set forth in section 1062 for each additional year the lease agreement is in effect, except that the fee for each year shall not be subject to any limit imposed under that section. In applying section 1062 to calculate the amount of the fee for the lease, the board shall calculate a separate annual fee for each year based on the amount of water proposed to be leased each year instead of calculating the fee based on the amount of water proposed to be diverted per year.

(2) The water district shall notify the board that it has approved a lease agreement, and shall provide the board a copy of the notice of determination submitted in compliance with the California Environmental Quality Act (commencing with section 21000 of the Public Resources Code), within ten days after the water district approves the lease agreement.

(3) The water lease shall not take effect until the first annual fee is paid, and the water lease shall not continue in effect in any subsequent year unless the annual fee for that year is paid.

(c) The board may collect additional fees to cover its costs of compliance with Water Code sections 1026 and 1029.

NOTE: AUTHORITY CITED: SECTIONS 1058 AND 1530, WATER CODE.
REFERENCE: SECTIONS 1025, 1025.5, 1031 AND 1525, WATER CODE.

HISTORY

1. *New section filed 12-23-2003 as an emergency; operative 1-1-2004 (Register 2003, No. 52). Pursuant to Water Code section 1530 this rulemaking action remains in effect until revised by the State Water Resources Control Board.*
2. *Amendment of subsections (a) and (b)(1) filed 10-14-2004 as an emergency; operative 10-14-2004 (Register 2004, No. 42). Pursuant to Water Code section 1530, this rulemaking action remains in effect until revised by the State Water Resources Control Board.*
3. *Amendment of subsections (a) and (b)(1) filed 10-21-2005 as an emergency; operative 10-21-2005. Water Code section 1530 provides that this filing shall be deemed an emergency and shall remain in effect until revised by the State Water Resources Control Board (Register 2005, No. 42).*
4. *Editorial correction of History 3 (Register 2008, No. 45).*

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

(a) A person who registers an appropriation of water for small domestic, livestock stockpond or small irrigation 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 registration pursuant to Water Code section 1228.5 shall pay to the board a renewal fee of $100.

NOTE: AUTHORITY CITED: SECTIONS 1058 AND 1530, WATER CODE.
REFERENCE: SECTIONS 1228.3, 1228.5 AND 1525, WATER CODE.

HISTORY

1. *New section filed 12-23-2003 as an emergency; operative 1-1-2004 (Register 2003, No. 52). Pursuant to Water Code section 1530 this rulemaking action remains in effect until revised by the State Water Resources Control Board.*
2. *Amendment of section heading and subsection (a) filed 11-14-2012 as an emergency; operative 11-14-2012. Water Code section 1530 provides that the regulation shall be deemed an emergency and shall remain in effect until revised by the State Water Resources Control Board (Register 2012, No. 46).*
3. *Amendment of subsection (a) filed 10-31-2013 as an emergency; operative 10-31-2013. Water Code section 1530 provides that the regulations shall be deemed an emergency and shall remain in effect until revised by the State Water Resources Control Board (Register 2013, No. 44).*

§ 1069. Proof of Claim.

A person who files a proof of claim under division 2, part 3, chapter 3, article 4 (commencing with section 2575) of the Water Code, shall pay to the board a filing fee of $500.

NOTE: AUTHORITY CITED: SECTIONS 1058 AND 1530, WATER CODE.
REFERENCE: SECTIONS 1528, 1535 AND 2850, WATER CODE.

HISTORY

1. *New section filed 12-23-2003 as an emergency; operative 1-1-2004 (Register 2003, No. 52). Pursuant to Water Code section 1530 this rulemaking action remains in effect until revised by the State Water Resources Control Board.*

§ 1070. Notice of Extraction and Diversion of Water.

A person who files a notice under division 2, part 5 (commencing with section 4999) of the Water Code, shall pay to the board a filing fee of $50.

NOTE: AUTHORITY CITED: SECTIONS 1058 AND 1530, WATER CODE.
REFERENCE: SECTIONS 1529, 1535 AND 5006, WATER CODE.

HISTORY

1. *New section filed 12-23-2003 as an emergency; operative 1-1-2004 (Register 2003, No. 52). Pursuant to Water Code section 1530 this rulemaking action remains in effect until revised by the State Water Resources Control Board.*
2. *Amendment filed 10-21-2009 as an emergency; operative 10-21-2009. Water Code section 1530 provides that this filing shall be deemed an emergency and shall remain in effect until revised by the State Water Resources Control Board (Register 2009, No. 43).*

§ 1071. Hydroelectric Projects.

(a) Except as provided in subdivision (b), a fee imposed under this chapter for an activity involving the diversion or use of water for the purpose of diverting water for hydropower generation shall be calculated as follows:

(1) At a facility licensed, or subject to licensing, by the Federal Energy Regulatory Commission, the fee shall be the greater of either 30 percent of the fee calculated in accordance with the other applicable provisions of this chapter or $100.

(2) At all other hydropower generation facilities, the fee shall be the greater of either 50 percent of the fee calculated in accordance with the other applicable provisions of this chapter or $100.

(b) Subdivision (a) does not apply to the following:

(1) Any permit, license, application, petition or other filing that authorizes or proposes an irrigation use, municipal use, or other consumptive use unless that permit, license, application, petition or other filing is primarily for power use and specifically identifies the consumptive use as an incidental use.

(2) Any fee or portion of a fee imposed pursuant to paragraph (1)(B), (2) or (3) of subdivision (a) of section 1062, subdivision (d) of section 1063, subdivision (d) of section 1065, or section 1069.

(3) Any expense imposed under part 3 (commencing with section 2000) of division 2 of the Water Code or to any fee imposed under chapter 28 of this division.

NOTE: AUTHORITY CITED: SECTIONS 1058 AND 1530, WATER CODE.
REFERENCE: SECTION 1525, WATER CODE.

HISTORY

1. *New section filed 12-23-2003 as an emergency; operative 1-1-2004 (Register 2003, No. 52). Pursuant to Water Code section 1530 this rulemaking action remains in effect until revised by the State Water Resources Control Board.*
2. *Amendment of subsection (b)(2) filed 10-21-2005 as an emergency; operative 10-21-2005. Water Code section 1530 provides that this filing shall be deemed an emergency and shall remain in effect until revised by the State Water Resources Control Board (Register 2005, No. 42).*
3. *Editorial correction of History 2 (Register 2008, No. 45).*

§ 1072. Joint and Several Liability.

If more than one person is liable for a fee under this chapter, then that liability shall be joint and several.

NOTE: AUTHORITY CITED: SECTIONS 1058 AND 1530, WATER CODE.
REFERENCE: SECTION 1525, WATER CODE.

HISTORY

1. *New section filed 12-23-2003 as an emergency; operative 1-1-2004 (Register 2003, No. 52). Pursuant to Water Code section 1530 this rulemaking action remains in effect until revised by the State Water Resources Control Board.*

§ 1073. Allocation of Fees and Expenses.

(a) The Chief, Division of Water Rights (Division Chief), is delegated the authority to apply Water Code section 1560, subdivision (b).

(b) The Division Chief's determination under Water Code section 1540 whether the United States Bureau of Reclamation (USBR) is likely to decline to pay fees or expenses for projects within the Central Valley Project, and any allocation of those fees or expenses, shall be consistent with the following criteria:

(1) The Division Chief first shall consult with the USBR to ascertain whether the USBR will pay the applicable amount or agree to contractual arrangements that, in the opinion of the Division Chief, provide an adequate substitute for payment of the fee or expense.

(2) If the USBR declines or is likely to decline to pay the fee or expense or to agree to contractual arrangements acceptable to the Division Chief, the Division Chief shall allocate the fee or expense to the USBR'S water supply contractors in accordance with subdivision (b)(2) of Water Code section 1560. The fee or expense for projects of the Central Valley Project shall be prorated among the contractors for the Central Valley Project based on either the contractor's entitlement under the contract or, if the contractor has a base supply under the contract, the contractor's supplemental supply entitlement. This formula is expressed mathematically as follows:

$$\mathrm{Fee}_i = \left[\frac{x_i}{\sum_{i-1}^{n} x_i}\right] \mathrm{Fee}_{USBR}$$

Where: *i* = individual contractor

x = supplemental water entitlement under the contract or total contract amount if there is no base supply under the contract

n= number of contractors

Fee $_{USBR}$ = fee or expense apportioned to the USBR for the Central Valley Project

(c) If a fee or expense or portion thereof is allocated, pursuant to subdivision (b)(2) of Water Code section 1560 or subdivision (b) of this section, to an individual water supply contractor that is a federal agency or Indian tribe who has declined, or is likely to decline, to pay the fee or expense, the Division Chief may apply subdivision (b) of Water Code section 1560 to the fee or expense or portion thereof allocated to that contractor.

(d) If a water supply contractor allocated a portion of an annual fee pursuant to subdivision (b)(2) of section 1560 of the Water Code or subdivision (b) of this section successfully petitions the board to reduce or eliminate that allocation, the board's action on the petition shall not provide a basis for recalculation or reapportionment of the annual fee for that fiscal year as

apportioned to any other contractor that has not filed a petition for reconsideration of its allocation.

(e) The following definitions apply to this section:

(1) "Base supply" means the amount of water delivered to a water user by USBR from the Central Valley Project that is designated as base supply in a water supply contract between the user and the USBR.

(2) "Supplemental supply entitlement" means the amount of water exceeding base supply delivered from the Central Valley Project to a water user.

NOTE: AUTHORITY CITED: SECTIONS 1058 AND 1530, WATER CODE.

REFERENCE: SECTIONS 1525, 1540 AND 1560, WATER CODE.

HISTORY

1. New section filed 12-23-2003 as an emergency; operative 1-1-2004 (Register 2003, No. 52). Pursuant to Water Code section 1530 this rulemaking action remains in effect until revised by the State Water Resources Control Board.

§ 1074. Administration of Fees and Expenses.

(a) Annual fees shall be imposed based on the fiscal year (July 1 through June 30). Annual fees shall be based on the regulations in effect at the time of assessment. Except as otherwise provided in section 1062, subdivision (b) and section 1064, subdivision (b), filing fees shall be based on the regulations in effect at the time of filing. All references in this chapter to the beginning of the year or to circumstances occurring during the year shall be construed to refer to the fiscal year.

(b) Except as provided in this subdivision, if the circumstances establishing a requirement for payment of an annual fee occur during a year, the entire annual fee shall be imposed for that year, even if those circumstances occur for only a portion of the year. The board may decide not to assess an annual fee if a permittee or licensee requests revocation of the permit or license before the annual fee is assessed and the board determines that revocation likely would be appropriate.

(c) If the identity of a fee payer changes before an assessment is issued, the previous fee payer remains responsible for payment of the assessment, unless the fee payer notifies the board of the name and address of the new fee payer at least 10 days before the assessment is issued. The notice must comply with section 831 of this division, if applicable.

(d) An annual fee shall be due and payable thirty days after the State Board of Equalization issues an assessment.

(e) Expenses and unpaid fees are due on the date that they should have been paid to the board.

(f) Whenever, while acting within the scope of its authority under chapter 8 (commencing with section 1525), part 2, division 2 of the Water Code, the board notifies the State Board of Equalization of an assessment, decision on a petition

for reconsideration, decision on a claim for refund, cancellation, or adjustment, the State Board of Equalization shall, without further review, collect, refund, cancel or adjust the assessment or other amount in accordance with the instructions of the board.

(g) If a fee payer files a petition for reconsideration of an assessment with the board pursuant to section 1077 or section 1078 of this chapter, then the fee payer may either (i) timely pay the assessment to the State Board of Equalization and include a request for refund in the petition for reconsideration filed with the board or (ii) postpone payment of the assessment while the petition for reconsideration is pending.

(1) If payment of the assessment is postponed until the board decides the petition for reconsideration, interest will continue to accrue from the date the assessment was initially due at the rate specified in Revenue and Taxation Code section 55042.

(2) The board shall promptly notify the State Board of Equalization of its decision on a petition for reconsideration.

(3) Any amount to be refunded or cancelled shall be credited by the State Board of Equalization on any amounts then due from the person from whom the amount to be refunded or cancelled was collected or by whom it was paid, and the balance shall be refunded to the person, or his or her successors, administrator, or executors.

(h) If the board denies the petition for reconsideration in whole or in part, then the assessment shall become final for purposes of the Fee Collection Procedures Law, part 30 (commencing with section 55001) of division 2 of the Revenue and Taxation Code, thirty days after the State Board of Equalization issues a reassessment implementing the board's decision. Interest shall be due from the date that the assessment was originally due and penalties shall accrue commencing on the date that the reassessment becomes final for purposes of the Fee Collection Procedures Law. This paragraph does not affect the deadline for filing a petition for writ of mandate under section 1126 of the Water Code. For purposes of section 1126 of the Water Code, the board's order or decision on a petition for reconsideration is final on the date that the board issues the order or decision.

(i) Thirty-one days following the date of assessment or reassessment by the State Board of Equalization, amounts assessed by the State Board of Equalization that were not the subject of a timely petition for reconsideration by the board, and amounts that were the subject of a timely petition for reconsideration that have been decided by the board to be owing, shall be treated as final liabilities under the Fee Collection Procedures Law.

(j) A person may not maintain a suit in any court for the recovery of a fee assessed by the State Board of Equalization unless the person has filed a petition for reconsideration in accordance with this chapter and has either paid the fee

in accordance with subdivision (d) or pays the fee within 30 days of the issuance of a reassessment of the fee pursuant to subdivision (h). The petition and payment of the fee in accordance with this subdivision constitute a claim for refund within the meaning of section 55242 of the Revenue and Taxation Code.

NOTE: AUTHORITY CITED: SECTIONS 1058 AND 1530, WATER CODE.

REFERENCE: CALIFORNIA CONSTITUTION, ARTICLE XIII, SECTION 32; AND SECTIONS 1525, 1535, 1536 AND 1537, WATER CODE.

HISTORY

1. *New section filed 12-23-2003 as an emergency; operative 1-1-2004 (Register 2003, No. 52). Pursuant to Water Code section 1530 this rulemaking action remains in effect until revised by the State Water Resources Control Board.*
2. *Amendment of subsections (a)-(c), (f) and (g), new subsection (j) and amendment of Note filed 10-14-2004 as an emergency; operative 10-14-2004 (Register 2004, No. 42). Pursuant to Water Code section 1530, this rulemaking action remains in effect until revised by the State Water Resources Control Board.*
3. *Editorial correction of subsection (j) (Register 2004, No. 46).*

§ 1075. Collection of Fees and Expenses.

(a) The State Board of Equalization shall collect the annual fees established under sections 1063, 1065, 1066, 1067, and 3833.1 of this division, and any unpaid fees or expenses that the board refers to the State Board of Equalization for collection. The expenses that the State Board of Equalization is required to collect pursuant to Water Code section 1537 shall be considered fees for purposes of the Fee Collection Procedures Law, part 30 (commencing with section 55001) of division 2 of the Revenue and Taxation Code. On referral by the board, a person owing a fee or expense that must be collected by the State Board of Equalization is deemed to have registered with the State Board of Equalization for purposes of the Fee Collection Procedures Law and entry into the State Board of Equalization registration system.

(b) The board may request from a fee payer any additional information necessary for the board to determine the appropriate fee or expense or for the State Board of Equalization to collect the fee or expense pursuant to the Fee Collection Procedures Law.

(c) For purposes of collection, the board shall provide the State Board of Equalization with the name and address of the fee payer or the fee payer's authorized representative. The board may designate the person from whom the State Board of Equalization shall collect the fee. The State Board of Equalization's issuance of an assessment to a fee payer's authorized representative shall be deemed to be notice to each fee payer.

(d) The State Board of Equalization may rely on the fee payer information provided by the board until the board notifies the State Board of Equalization of a change in the fee payer's information. A fee payer shall promptly notify the board of any changes or corrections to the fee payer's identifying information.

The board shall promptly notify the State Board of Equalization of changes or corrections to the identifying information.

NOTE: AUTHORITY CITED: SECTIONS 1058 AND 1530, WATER CODE.
REFERENCE: SECTIONS 1525, 1535, 1536 AND 1537, WATER CODE.

HISTORY

1. New section filed 12-23-2003 as an emergency; operative 1-1-2004 (Register 2003, No. 52). Pursuant to Water Code section 1530 this rulemaking action remains in effect until revised by the State Water Resources Control Board.

§ 1076. Cancellation for Nonpayment of Fees.

The board may cancel an application, petition, or request for release from priority for failure to pay either a filing fee required under section 1062 or 1064 or an annual fee required under section 1063 or 1065 of this chapter. Before canceling the application, petition, or request, the board first shall notify the fee payer that nonpayment of the fee may result in cancellation of the application, petition or request. If the fee payer does not submit the required fee within 60 days after such notification, the board may cancel the application, petition, or request.

NOTE: AUTHORITY CITED: SECTIONS 1058 AND 1530, WATER CODE.
REFERENCE: SECTIONS 1270, 1271, 1525 AND 1535, WATER CODE.

HISTORY

1. New section filed 12-23-2003 as an emergency; operative 1-1-2004 (Register 2003, No. 52). Pursuant to Water Code section 1530 this rulemaking action remains in effect until revised by the State Water Resources Control Board.

§ 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 either 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.

NOTE: AUTHORITY CITED: SECTIONS 1058 AND 1530, WATER CODE.

REFERENCE: SECTIONS 1120 AND 1537, WATER CODE.

HISTORY

1. *New section filed 12-23-2003 as an emergency; operative 1-1-2004 (Register 2003, No. 52). Pursuant to Water Code section 1530 this rulemaking action remains in effect until revised by the State Water Resources Control Board.*
2. *Amendment of subsections (a) and (b) and amendment of Note filed 10-14-2004 as an emergency; operative 10-14-2004 (Register 2004, No. 42). Pursuant to Water Code section 1530, this rulemaking action remains in effect until revised by the State Water Resources Control Board.*
3. *Amendment of subsection (b) filed 10-21-2005 as an emergency; operative 10-21-2005. Water Code section 1530 provides that this filing shall be deemed an emergency and shall remain in effect until revised by the State Water Resources Control Board (Register 2005, No. 42).*
4. *Editorial correction of History 3 (Register 2008, No. 45).*
5. *Redesignation and amendment of portions of former subsection (a) as new subsections (a)(1)-(2) and new subsections (a)(2)(A)-(D) filed 11-5-2008 as an emergency; operative 11-5-2008. Water Code section 1530 provides that this filing shall be deemed an emergency and shall remain in effect until revised by the State Water Resources Control Board (Register 2008, No. 45).*

§ 1078. Objection to Determination of Expenses.

(a) In a proceeding under chapter 3 (commencing with section 2500) of part 3 of division 2 of the Water Code, any objection to the board's collection of a filing fee for proof of claim or of interim or partial payments pursuant to Water Code section 2865, shall be subject to reconsideration under chapter 4 (commencing with Section 1120) of part 1 of division 2 of the Water Code. Any petition by an aggrieved person to the board for reconsideration shall be submitted in accordance with that chapter and article 12 (commencing with section 768) of chapter 2 of division 3 of this title. 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.

(b) Any objection to the final determination of expenses, or apportionment thereof, made by the board and filed with the court shall be made in accordance

with the provisions of article 13 (commencing with Water Code section 2850) of chapter 3 of part 3 of division 2 of the Water Code.

NOTE: AUTHORITY CITED: SECTIONS 1058 AND 1530, WATER CODE.

REFERENCE: SECTIONS 1120, 1525 AND 2850, WATER CODE.

HISTORY

1. *New section filed 12-23-2003 as an emergency; operative 1-1-2004 (Register 2003, No. 52). Pursuant to Water Code section 1530 this rulemaking action remains in effect until revised by the State Water Resources Control Board.*

* * *

CHAPTER 22. STATE POLICY FOR WATER QUALITY CONTROL

§ 2900. Nondegradation: Statement of Policy with Respect to Maintaining High Quality of Waters in California

HISTORY

1. *New chapter 22 including section 2900 added. State Water Resources Control Board Nondegradation Policy as adopted October 24, 1968, Resolution No. 68-16, submitted to OAL for filing and publication pursuant to Government Code section 11343.8, but not review pursuant to Government Code section 11353, filed 6-21-93 (Register 93, No. 26).*
2. *Order to depublish chapter 22 (sections 2900-2906 inclusive) filed 8-5-93 (Register 93, No. 32).*

* * *

§ 2921. Water Quality Control Policy for Maintaining Instream Flows in Northern California Coastal Streams.

On May 4, 2010, the State Water Resources Control Board adopted Resolution No. 2010-0021, adopting the Water Quality Control Policy for Maintaining Instream Flows in Northern California Coastal Streams (North Coast Instream Flow Policy) in accordance with California Water Code section 1259.4. On October 16, 2012, the State Water Resources Control Board adopted Resolution No. 2012-0058, setting aside Resolution No. 2010-0021, thereby vacating the Board's adoption of the Policy, as required by the Alameda County Superior Court in Living Rivers Council v. State Water Resources Control Board (Sup. Ct. Alameda County, 2012, No. RG10-543923). On October 22, 2013, the State Water Resources Control Board adopted Resolution No. 2013-0035, readopting the North Coast Instream Flow Policy without any significant changes.

The North Coast Instream Flow Policy establishes principles and guidelines for maintaining instream flows for the protection of fishery resources, while minimizing water supply impacts on other beneficial uses of water, such as irrigation, municipal use, and domestic use. The geographic scope of the North Coast Instream Flow Policy encompasses coastal streams from the Mattole River to San Francisco and coastal streams entering northern San Pablo Bay, and

extends to five counties: Marin, Sonoma, and portions of Napa, Mendocino, and Humboldt Counties. The North Coast Instream Flow Policy applies to applications to appropriate water, small domestic use, small irrigation use, and livestock stockpond registrations, and water right petitions.

The North Coast Instream Flow Policy does not establish specific instream flow requirements for particular rivers or streams. Nor does the North Coast Instream Flow Policy approve any particular water diversion projects, or specify the terms and conditions that will be incorporated into water right permits, licenses, or registrations. Instead, the North Coast Instream Flow Policy establishes guidelines for evaluating the potential impacts of water diversion projects on stream hydrology and biological resources. The North Coast Instream Flow Policy includes principles to ensure that new water appropriations and changes to existing water right permits and licenses will not affect the instream flows needed for fish spawning, migration and rearing, or the flows needed to maintain natural flow variability, which protects the various biological functions that are dependent on that variability. The North Coast Instream Flow Policy also contains principles to ensure that migration paths to spawning and rearing habitats are not blocked.

The North Coast Instream Flow Policy includes the following elements:

• Measures designed to be protective of fishery resources throughout the policy area, including a season during which diversions may occur, a formula for establishing minimum bypass flows past a diversion, and limits on the maximum cumulative water diversion rate in a watershed.

• Guidance for site-specific studies to evaluate whether alternative measures would be protective of fishery resources.

• Guidance regarding the analysis of water availability required in order for the State Water Board to determine whether unappropriated water is available to supply a proposed water diversion project. (See Wat. Code, § 1375, subd. (d).) The guidance includes procedures for evaluating whether a proposed water diversion, in combination with existing diversions in a watershed, may affect instream flows needed for the protection of fishery resources.

• Limits on the construction of new onstream dams and measures to ensure that approvals of onstream dams do not adversely affect habitat needs of fishery resources.

• Review procedures for pending water right applications and petitions.

• Options for watershed-based approaches that allow cost sharing among diverters to evaluate environmental impacts of diversions on a watershed basis rather than individually, and to allow coordination of diversions.

• Water right enforcement provisions, including compliance assurance provisions, criteria for establishing enforcement priorities, factors to consider in setting administrative civil liability amounts, and descriptions of enforcement actions that could be taken.

• Provisions for case-by-case exceptions from policy provisions.

• Provisions for monitoring and reporting of diversions and streamflows, and policy effectiveness review.

History

1. *New section filed 9-22-2010 summarizing State Water Control Board Resolution No. 2010-0021, adopted 5-4-2010; approved by OAL pursuant to Government Code section 11353 on 9-22-2010 (Register 2010, No. 39).*
2. *Readopted section, as amended, summarizing Policy for Maintaining Instream Flows in Northern California Coastal Streams, Resolution No. 2013-0035, adopted 10-22-2013 by the State Water Resources Control Board; approved by OAL and effective 2-4-2014 pursuant to Government Code section 11353; filed with the Secretary of State 2-4-2014 (Register 2014, No. 6). The Policy was ordered vacated by the Superior Court in Living Rivers Council v . State Water Resources Control Board (Sup. Ct. Alameda County, 2012, No. RG10-543923) and was vacated under Resolution 2012-0058, adopted 10-16-2012 by the State Water Resources Control Board.*

* * *

CHAPTER 23. WATER QUALITY CONTROL PLANS

* * *

§ 3002. Clear and Concise Summary of Revised Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary.

On December 13, 2006 the State Water Resources Control Board (State Water Board) adopted Resolution No. 2006-0098, entitled Adoption of the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (2006 Bay-Delta Plan). The 2006 Bay-Delta Plan supersedes the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary adopted May 1995 (1995 Plan), the Water Quality Control Plan for Salinity for the San Francisco Bay/Sacramento-San Joaquin Delta adopted May 1991 (1991 Plan) and the Water Quality Control Plan for the Sacramento-San Joaquin Delta and Suisun Marsh adopted August 1978 (1978 Plan).

(a) The introductory chapter was revised, summarized, and reorganized. A new section D was added describing emerging water quality issues. The State Water Board is committed to further examining the following issues:

(1) Pelagic Organism Decline.

(2) Climate Change.

(3) Delta and Central Valley Salinity.

(4) San Joaquin River Flows.

(b) Beneficial uses established in the 1995 Plan remain unchanged in the 2006 Bay-Delta Plan.

(c) Water Quality Objectives for Municipal and Industrial uses, Agricultural uses and Fish and Wildlife beneficial uses remain unchanged. No new water quality objectives were adopted in the 2006 Bay-Delta Plan. Water quality objective footnotes containing implementation dates have been moved to the

program of Implementation or, if obsolete have been deleted. The fish and wildlife water quality objective footnotes in Table 3 have been edited for clarification and to use the same terminology as the corresponding footnotes in Water Right Decision 1641 (D-1641), which implements the flow-dependent fish and wildlife objectives.

(d) Implementation Measures.

(1) Measures within the State Water Board Authority: This section was expanded to include specific implementation measures, many of which are implemented through permit and license terms adopted in D-1641. This section adds a staged implementation of the April 15 through May 15 San Joaquin River pulse flow objectives to allow for scientific experimentation.

(2) Measures requiring a Combination of State Water Board Authorities and Actions by Other Agencies: This section was revised to update the State Water Board's recommendations to other agencies on their programs to achieve water quality objectives.

(3) Recommendations to Other Agencies: This section has been updated to address new developments since the release of the 1995 Plan.

(4) Monitoring and Special Studies Program: This section was updated to make changes to the Water Quality Compliance and Baseline Monitoring Program. The addition and deletion of stations as well as any other changes were made as proposed by the California Department of Water Resources.

History

1. *Summary of regulatory provisions filed 7-17-95. Regulatory provisions approved by OAL, plan effective 7-17-95 pursuant to Government Code section 11353 (Register 95, No. 29).*
2. *Repealer and new section containing concise summary of amendments to the water quality control plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, Resolution No. 2006-0098, filed 6-27-2007; new section approved by the State Water Resources Control Board 12-13-2006; approved by OAL and operative 6-27-2007 pursuant to Government Code section 11353 (Register 2007, No. 26).*

* * *

Chapter 27. Regulations for Implementation of the Environmental Quality Act of 1970

Article 1. General

§ 3720. Purpose.

(a) The purpose of this Chapter is to specify the objectives, criteria and procedures to be followed by the state board and the regional boards in implementing the California Environmental Quality Act. (CEQA). (Pub. Resources Code, div. 13, (commencing with section 21000).)

(b) This Chapter does not apply if the board determines that the activity is not subject to CEQA.

(c)(1) The State CEQA Guidelines (Cal. Code Regs., tit. 14, div. 6, ch. 3 (commencing with section 15000)), including all subsequent amendments thereto, are hereby incorporated by reference as if fully set forth in this Chapter. Except as provided in paragraph (2), to the extent that there are any direct conflicts between this Chapter and the State CEQA Guidelines, the State CEQA Guidelines prevail.

(2) Article 6 of this Chapter contains the exclusive procedural requirements for the implementation of the boards' regulatory programs that have been certified by the Secretary for Natural Resources as meeting the requirements of section 21080.5 of the Public Resources Code.

(d) Nothing in this Chapter limits the boards' authority to protect water resources under other provisions of law.

NOTE: AUTHORITY CITED: SECTION 21082, PUBLIC RESOURCES CODE.

REFERENCE: SECTIONS 21000-21175, PUBLIC RESOURCES CODE.

HISTORY

1. *New subchapter 15 (articles 1-6, sections 3720-3782, not consecutive, and appendices A-C) filed 1-18-82; effective thirtieth day thereafter (Register 82, No. 4).*
2. *Change without regulatory effect renumbering chapter heading filed 11-10-93 pursuant to section 100, title 1, California Code of Regulations (Register 93, No. 46).*
3. *Amendment of section and Note filed 1-19-2011; operative 2-18-2011 (Register 2011, No. 3).*

§ 3721. Definitions.

(a) "Board," "state board," and "regional board" have the same meaning as set forth in section 640 of Title 23.

(b) "Notice of Decision" means a brief notice to be filed by the board with the Secretary for Natural Resources after it has adopted or approved a standard, rule, regulation, plan, or related project in accordance with an exempt regulatory program. A sample of this notice appears in Appendix B.

(c) "Notice of Filing" means a brief notice of availability to be posted on the board's website, and provided to any person who requests it in writing, upon completion of the written documentation prepared for a proposed activity in accordance with an exempt regulatory program. A sample of this notice appears in Appendix C.

NOTE: AUTHORITY CITED: SECTION 21082, PUBLIC RESOURCES CODE.

REFERENCE: SECTION 21080.5, PUBLIC RESOURCES CODE; AND SECTION 13050, WATER CODE.

HISTORY

1. *Amendment of section and Note filed 1-19-2011; operative 2-18-2011 (Register 2011, No. 3).*

§ 3722. Compliance with Permit Streamlining Act.

The board shall complete review and take action with regard to development projects subject to the Permit Streamlining Act (Chapter 4.5

(commencing with section 65920) of Division 1 of Title 7 of the Government Code) within the time limits set forth in Article 5 (commencing with section 65950) of the Permit Streamlining Act in accordance with these regulations, except as provided by Water Code section 13264.

NOTE: AUTHORITY CITED: SECTIONS 21082 AND 21100.2, PUBLIC RESOURCES CODE.
REFERENCE: SECTIONS 65950-65957, GOVERNMENT CODE; AND SECTION 13264, WATER CODE.

HISTORY

1. Amendment of section heading, section and Note filed 1-19-2011; operative 2-18-2011 (Register 2011, No. 3).

§ 3723. Master Environmental Assessment.

For purposes of Section 15169 of the State CEQA Guidelines, the following documents have been prepared and designated by the state board as a master environmental assessment for the particular hydrographic area under consideration:

(a) All water quality control plans, and amendments and supplements to such plans, adopted by the regional boards and approved by the state board pursuant to Article 3, Chapter 4 of Division 7 of the Water Code.

(b) All water quality control plans adopted by the state board pursuant to Water Code Section 13170.

NOTE: AUTHORITY CITED: SECTION 21082, PUBLIC RESOURCES CODE.
REFERENCE: SECTION 21003, PUBLIC RESOURCES CODE.

HISTORY

1. Amendment of first paragraph and Note filed 1-19-2011; operative 2-18-2011 (Register 2011, No. 3).

Article 2. Exemptions

§ 3730. Ministerial Project Exemption.

Ministerial projects are exempt from the requirements of CEQA and do not require the preparation of environmental documents. Generally, in the absence of special circumstances, the following activities have been determined to be ministerial projects:

(a) Issuance of certifications pursuant to Section 169 of the Internal Revenue Code of 1954, as amended.

(b) Issuance of licenses to appropriate water pursuant to Water Code Sections 1600-1611.

(c) Issuance of permits to appropriate water pursuant to a decision or order of the state board.

(d) Issuance of certificates pursuant to Health and Safety Code Section 44533.

(e) Issuance of registrations for small domestic and livestock stockpond uses pursuant to Article 2.7 (commencing with section 1228) of Chapter 1 of Part 2 of Division 2 of the Water Code.

NOTE: AUTHORITY CITED: SECTION 21082, PUBLIC RESOURCES CODE.

REFERENCE: SECTION 21080(B), PUBLIC RESOURCES CODE.

HISTORY

1. Amendment of subsections (d) and (e), repealer of subsections (f) and (g) and amendment Note filed 1-19-2011; operative 2-18-2011 (Register 2011, No. 3).

§ 3733. Waste Discharge Requirements Adopted Pursuant to Water Code Division 7, Chapter 5.5.

In accordance with Water Code section 13389, the boards shall not be required to comply with CEQA prior to the adoption of waste discharge requirements that serve as a National Pollutant Discharge Elimination System (NPDES) permit pursuant to Water Code section 13377, except requirements for new sources as defined in Title 40, Code of Federal Regulations, sections 122.2 and 122.29.

NOTE: AUTHORITY CITED: SECTION 21082, PUBLIC RESOURCES CODE.

REFERENCE: SECTION 13389, WATER CODE; AND COUNTY OF LOS ANGELES V. CALIFORNIA STATE WATER RESOURCES CONTROL BD. (2006) 143 CAL.APP.4TH 985.

HISTORY

1. Amendment of section heading, section and Note filed 1-19-2011; operative 2-18-2011 (Register 2011, No. 3).

Article 3. Applications for Waste Discharge, Water Recycling Requirements, or Other Entitlements for Use

§ 3740. Submission of Information.

Whenever any person applies to the board for waste discharge requirements, water recycling requirements, or other entitlement for use, the board may require that person to submit data and information necessary to enable the board to determine whether the project proposed may have a significant effect on the environment.

NOTE: AUTHORITY CITED: SECTION 21082, PUBLIC RESOURCES CODE.

REFERENCE: SECTION 21082.1, PUBLIC RESOURCES CODE.

HISTORY

1. Amendment of article heading, section and Note filed 1-19-2011; operative 2-18-2011 (Register 2011, No. 3).

§ 3741. Additional Information Requirements.

(a) In addition to the information requested under Section 3740, the person applying for waste discharge requirements, water recycling requirements, or other entitlement for use, shall complete the Environmental Information Form

contained in Appendix H of the State CEQA Guidelines if the conditions specified in subsections (1), (2), (3) and (4) of this subsection are met:

(1) The project is subject to the requirements of CEQA;

(2) The project does not qualify for an exemption under Article 2 of this Chapter or Article 18 or 19 of the State CEQA Guidelines;

(3) The project is to be carried out by a person other than a public agency; and

(4) No other agency is lead agency for the project.

(b) In addition to the information requested under Section 3740, the person applying for waste discharge requirements, water recycling requirements, or other entitlement for use shall ensure that the board receives copies of the environmental documents or Notice of Exemption if the following conditions are met:

(1) The project is subject to CEQA;

(2) The project is to be carried out by a person other than the board; and

(3) A public agency other than the board is lead agency.

NOTE: AUTHORITY CITED: SECTION 21082, PUBLIC RESOURCES CODE.

REFERENCE: SECTIONS 21000-21177, PUBLIC RESOURCES CODE.

HISTORY

1. Amendment of subsections (a), (a)(2) and (b) and amendment Note filed 1-19-2011; operative 2-18-2011 (Register 2011, No. 3).

§ 3742. Denial or Limitation of Waste Discharge Requirements, Water Recycling Requirements, or Other Entitlement for Use.

(a) The board, when acting as a responsible agency, may prohibit, postpone, or condition the discharge of waste and may deny, postpone, or condition water recycling requirements or other entitlement for use for any project subject to CEQA to protect against environmental damage to water resources, to minimize adverse environmental impacts on water resources, or to ensure long-term protection of water resources, or if the information required pursuant to sections 3740 and 3741 has not been timely submitted to the board. The board's authority under this subdivision is limited to the protection of water resources within its purview.

(b) The board, when acting as lead agency, may prohibit, postpone, or condition the discharge of waste and may deny, postpone, or condition water recycling requirements or other entitlements for use for any project to protect against environmental damage, to prevent nuisance, to minimize adverse environmental impacts, or to ensure long-term protection of the environment, or if the information required pursuant to sections 3740 and 3741 has not been timely submitted to the board.

NOTE: AUTHORITY CITED: SECTION 21082, PUBLIC RESOURCES CODE.

REFERENCE: SECTIONS 21002 AND 21002.1, PUBLIC RESOURCES CODE.

History

1. Amendment of section heading, section and Note filed 1-19-2011; operative 2-18-2011 (Register 2011, No. 3).

Article 4. Applications for Funding

§ 3750. Submission of Information.

(a) Whenever any public agency to the state board for discretionary financial assistance from the state board for a project to be undertaken by such public agency, the application shall be supported by an Initial Study and an adopted Negative Declaration, or a Final Environmental Impact Report, as required by CEQA, or the public agency shall provide documentation to support the basis for a statutory or categorical exemption from CEQA.

(b) Whenever any person that is not a public agency applies to the state board for any form of discretionary financial assistance for a project to be undertaken by such person, the application shall be submitted with sufficient information and data to determine whether the project may have a significant effect on the environment. If the supplied information and data indicate that the project will have a significant effect on the environment, then such person shall submit with the application sufficient information and data to determine feasible changes in the project that mitigate or avoid the substantial adverse changes in the environment. This information may be supplied in the form of a draft EIR or an Initial Study and Negative Declaration. However, regardless of the format used, the state board shall not use the information or documents as its own without an independent evaluation and analysis of such information or documents.

Note: Authority cited: Section 21082, Public Resources Code.

Reference: Sections 21000-21177, Public Resources Code.

History

1. Amendment of section and Note filed 1-19-2011; operative 2-18-2011 (Register 2011, No. 3).

§ 3751. Limitation of Funding.

(a) The state board, acting as a responsible agency, may deny, postpone or condition discretionary financial assistance for any project subject to CEQA that is to be undertaken by any person where the state board determines that such action is necessary to protect against environmental damage to water resources, to prevent nuisance, to minimize adverse environmental impact on water resources, or to ensure long-term protection of water resources, or if the information required pursuant to section 3750 has not been timely submitted to the state board. The state board's authority under this subdivision is limited to the protection of water resources within its purview.

(b) The state board, acting as lead agency, may deny, postpone, or condition discretionary financial assistance for any project that is undertaken by

any person where the state board determines that such action is necessary to protect against environmental damage, to prevent nuisance, to minimize adverse environmental impacts, or to ensure long-term protection of the environment, or if the information required pursuant to section 3750 has not been timely submitted to the state board.

NOTE: AUTHORITY CITED: SECTION 21082, PUBLIC RESOURCES CODE.

REFERENCE: SECTIONS 21002 AND 21002.1, PUBLIC RESOURCES CODE.

HISTORY

1. Amendment of section and Note filed 1-19-2011; operative 2-18-2011 (Register 2011, No. 3).

Article 5. Processing of Environmental Documents

§ 3760. Time Limits in Action by Responsible Agency. [Repealed]

NOTE: AUTHORITY CITED: SECTION 21082, PUBLIC RESOURCES CODE; 14 CAL. ADMIN. CODE 15085.5.

REFERENCE: DIVISION 13, PUBLIC RESOURCES CODE.

HISTORY

1. Repealer filed 1-19-2011; operative 2-18-2011 (Register 2011, No. 3).

§ 3761. Determination As to Completeness of Application. [Repealed]

NOTE: AUTHORITY CITED: SECTION 21082, PUBLIC RESOURCES CODE; SECTIONS 62928 AND 65943, GOVERNMENT CODE.

REFERENCE: DIVISION 13, PUBLIC RESOURCES CODE.

HISTORY

1. Repealer filed 1-19-2011; operative 2-18-2011 (Register 2011, No. 3).

§ 3762. Availability of Environmental Documents.

Environmental documents that have been prepared by the board, or that will be considered by the board prior to approval of a project, shall be available for public inspection upon request during normal working hours at the appropriate board office.

NOTE: AUTHORITY CITED: SECTION 21082, PUBLIC RESOURCES CODE.

REFERENCE: SECTION 21105, PUBLIC RESOURCES CODE; AND SECTIONS 6250-6276.48, GOVERNMENT CODE.

HISTORY

1. Amendment of section and Note filed 1-19-2011; operative 2-18-2011 (Register 2011, No. 3).

§ 3763. Public Participation and Hearings.

The board shall take appropriate action to encourage public participation and comment in the preparation and review of environmental documents. Such action may include a public hearing, a workshop or a board meeting when such is deemed necessary by the board for proper evaluation of the project involved.

NOTE: AUTHORITY CITED: SECTION 21082, PUBLIC RESOURCES CODE.

REFERENCE: SECTIONS 21000-21177, PUBLIC RESOURCES CODE.

HISTORY

1. Amendment of section and Note filed 1-19-2011; operative 2-18-2011 (Register 2011, No. 3).

§ 3764. Charges for Preparation of Environmental Documents. [Repealed]

NOTE: AUTHORITY CITED: SECTION 21082, PUBLIC RESOURCES CODE; 14 CAL. ADMIN. CODE 15053. REFERENCE: SECTION 21089, PUBLIC RESOURCES CODE.

HISTORY

1. Repealer filed 1-19-2011; operative 2-18-2011 (Register 2011, No. 3).

Article 6. Exempt Regulatory Programs

§ 3775. Applicability.

This article applies only to those regulatory programs or portions thereof that are administered by the board and that have been certified as an exempt regulatory program by the Secretary for Natural Resources in accordance with subdivision (c) of Public Resources Code Section 21080.5. Such programs include the Water Quality Control (Basin)/208 Planning Program of the state board and regional boards, and includes all water quality control plans, state policies for water quality control, and all components of California's water quality management plan as defined in Code of Federal Regulations, title 40, sections 130.2(k) and 130.6. This article contains the exclusive procedural requirements for those certified regulatory programs.

NOTE: AUTHORITY CITED: SECTION 21082, PUBLIC RESOURCES CODE.
REFERENCE: SECTION 21080.5, PUBLIC RESOURCES CODE.

HISTORY

1. Amendment filed 1-19-2011; operative 2-18-2011 (Register 2011, No. 3).

§ 3775.5. Early Public Consultation.

(a) Prior to circulating the draft Substitute Environmental Documentation described in section 3777, the board shall seek early public consultation. Early public consultation may include one or more scoping meetings.

(b) The purpose of a scoping meeting is to seek input from public agencies and members of the public on the range of project actions, alternatives, reasonably foreseeable methods of compliance, significant impacts to be analyzed, cumulative impacts if any, and mitigation measures that will reduce impacts to a less than significant level; and to eliminate from detailed study issues found not to be important. Scoping may also assist in resolving concerns of affected federal, state, and local agencies, the proponent of the action, and other interested persons.

(c) Scoping meetings should be held in the watershed or general vicinity of where the project is to take place, if practicable. The board shall give notice of

the time and location of the scoping meeting at least 10 days in advance of the meeting. Notice of a scoping meeting shall be posted on the board's website and should be provided to all of the following:

(1) Any county or city where the project is located;

(2) Any public agency that has jurisdiction by law with respect to the project; and

(3) Any organization or individual who has filed a written request for the notice.

NOTE: AUTHORITY CITED: SECTION 21082, PUBLIC RESOURCES CODE.

REFERENCE: SECTIONS 21080.5 AND 21082.1, PUBLIC RESOURCES CODE.

HISTORY

1. New section filed 1-19-2011; operative 2-18-2011 (Register 2011, No. 3).

§ 3776. Roles of State Board and Regional Boards.

(a) The state board shall be the lead agency with respect to its adoption or revision of any state policy for water quality control or other plans, policies, or regulations that it adopts or revises.

(b) The regional board shall be the lead agency with respect to adoption or amendment of any of its regional water quality control plans or guidelines, as described in Water Code sections 13240 through 13244 and 13245.5. Substitute environmental documentation adopted or approved by the regional board is final upon such adoption or approval, subject to subdivision (d), below. The Notice of Decision shall be filed upon approval of the regional water quality control plan or guidelines by the state board, and if applicable, the Office of Administrative Law.

(c) Pursuant to its approval authority under Water Code sections 13245 through 13246, the state board shall review the substitute environmental documentation of the regional board, and consider the regional board's findings under section 3777 subdivisions (d), (e), and (f) . The state board may make its own findings, or may incorporate by reference the regional board's findings.

(d) Notwithstanding subdivision (c), above, the state board shall become the lead agency if, following resubmission of a regional water quality control plan or revision thereof that it has previously returned to the regional board for reconsideration, the state board revises and approves such plan pursuant to Water Code section 13245. In such event, the state board need not duplicate the CEQA processes performed by the regional board, and need not recirculate the substitute environmental documentation prepared by the regional board unless recirculation would be required pursuant to California Code of Regulations, title 14, section 15088.5.

NOTE: AUTHORITY CITED: SECTION 21082, PUBLIC RESOURCES CODE.

REFERENCE: SECTIONS 21000-21177, PUBLIC RESOURCES CODE; SECTIONS 13140-13147 AND 13240-13247, WATER CODE.

History

1. Amendment of section heading, repealer and new section and amendment of Note filed 1-19-2011; operative 2-18-2011 (Register 2011, No. 3).

§ 3777. Substitute Environmental Documentation: Requirements for Adoption or Approval of Plans or Policies.

(a) Any water quality control plan, state policy for water quality control, and any other components of California's water quality management plan as defined in Code of Federal Regulations, title 40 sections 130.2(k) and 130.6, proposed for board approval or adoption must include or be accompanied by Substitute Environmental Documentation (SED) and supported by substantial evidence in the administrative record. The Draft SED may be comprised of a single document or a compilation of documents. The Draft SED must be circulated prior to board action approving or adopting a project, as specified in sections 3778 and 3779. The Draft SED shall consist of:

(1) A written report prepared for the board, containing an environmental analysis of the project;

(2) A completed Environmental Checklist, a sample of which is contained in Appendix A to this Chapter. The sample Environmental Checklist may be modified as appropriate to meet the particular circumstances of a project. The issues identified in the Environmental Checklist must be evaluated in the checklist or elsewhere in the SED; and

(3) Other documentation as the board may include.

(b) The Draft SED shall include, at a minimum, the following information:

(1) A brief description of the proposed project;

(2) An identification of any significant or potentially significant adverse environmental impacts of the proposed project;

(3) An analysis of reasonable alternatives to the project and mitigation measures to avoid or reduce any significant or potentially significant adverse environmental impacts; and

(4) An environmental analysis of the reasonably foreseeable methods of compliance. The environmental analysis shall include, at a minimum, all of the following:

(A) An identification of the reasonably foreseeable methods of compliance with the project;

(B) An analysis of any reasonably foreseeable significant adverse environmental impacts associated with those methods of compliance;

(C) An analysis of reasonably foreseeable alternative methods of compliance that would have less significant adverse environmental impacts; and

(D) An analysis of reasonably foreseeable mitigation measures that would minimize any unavoidable significant adverse environmental impacts of the reasonably foreseeable methods of compliance.

(c) In the preparation of the environmental analysis contained in subdivision (b)(4), the board may utilize numerical ranges or averages where specific data are not available; however, the board shall not be required to engage in speculation or conjecture. The environmental analysis shall take into account a reasonable range of environmental, economic, and technical factors, population and geographic areas, and specific sites, but the board shall not be required to conduct a site-specific project level analysis of the methods of compliance, which CEQA may otherwise require of those agencies who are responsible for complying with the plan or policy when they determine the manner in which they will comply.

(d) As to each impact identified in subdivisions (b)(2) and (b)(4)(B), the SED shall contain findings as described in State CEQA Guidelines section 15091, and if applicable, a statement described in section 15093.

(e) If the board determines that no fair argument exists that the project could result in any reasonably foreseeable significant adverse environmental impacts, the SED shall include a finding to that effect in lieu of the analysis described in subdivision (b)(3).

(f) If the board determines that no fair argument exists that the reasonably foreseeable methods of compliance with the project could result in any reasonably foreseeable significant adverse environmental impacts, the SED shall include a finding to that effect in lieu of the analysis described in subdivisions (b)(4)(C) and (b)(4)(D).

NOTE: AUTHORITY CITED: SECTION 21082, PUBLIC RESOURCES CODE.

REFERENCE:

REFERENCE: SECTIONS 21080.5 AND 21159, PUBLIC RESOURCES CODE.

HISTORY

1. Amendment of section heading, section and Note filed 1-19-2011; operative 2-18-2011 (Register 2011, No. 3).

§ 3778. Consultation.

Upon completion of the Draft SED, the board shall consult with other public agencies having jurisdiction by law with respect to the proposed project, or which exercise authority over resources that may be affected by the proposed project, and may consult with persons having special expertise with regard to the potential environmental effects involved in the proposed project. The board may consult with such persons by transmitting a copy of the written report or by other appropriate means.

NOTE: AUTHORITY CITED: SECTION 21082, PUBLIC RESOURCES CODE.

REFERENCE: SECTION 21080.5, PUBLIC RESOURCES CODE.

HISTORY

1. Amendment of section and Note filed 1-19-2011; operative 2-18-2011 (Register 2011, No. 3).

§ 3779. Notice of Filing of Draft SED; Public Comments.

(a) Upon completion of the Draft SED, the board shall post on its website a Notice of Filing in a format similar to the one contained in Appendix C and shall provide a copy to any person who requests it in writing. The Notice of Filing shall indicate the applicable written comment period and date of the public hearing on the adequacy of the Draft SED. The written comment period and the public hearing on the adequacy of the Draft SED may, but need not, be held contemporaneously with the comment period and the public hearing for the project.

(b) Written Comments: The board shall prescribe a written comment period on the adequacy of the Draft SED. The written comment period shall be for a period of not less than 45 days, which may be shortened to 30 days in exceptional circumstances as determined by the board, or if the board makes the determinations specified in subdivisions (e) and (f) of section 3777. The board may allow a longer written comment period. The board may refuse to accept written comments received after the noticed deadline. The board is not required to consider any written comment that is received after the deadline.

(c) Oral Comments: The board shall conduct a public hearing for the receipt of oral comments either during or after the written comment period. If the public hearing is conducted during the written comment period, it shall be at least 30 days after posting of the notice described in subdivision (a). The board is not required to consider any oral comment that is received after the public hearing.

(d) The board shall prepare written responses to the significant environmental issues raised in the comments received during the written comment period, including written comments, and oral comments received at the public hearing if the public hearing is held prior to the close of the written comment period. The board shall respond in writing or orally to significant environmental issues raised at the public hearing. The board is not required to respond to late comments. Copies of written responses shall be available for any person to review prior to the board's approval of the SED. Copies of written responses to public agency comments received during the written comment period shall be provided to those agencies at least 10 days prior to the board's approval of the SED. The comments received, and the responses thereto, shall be included in the record of the board action.

(e) At the close of the public hearing, the board may either take action or defer action to a subsequent meeting of the board. If the board defers action, the board must allow additional public comment on the Draft SED only if recirculation would be required for an environmental impact report pursuant to California Code of Regulations, title 14, section 15088.5, in which case the board may limit any additional public comment to the significant new information contained in the recirculated Draft SED. If the board defers action and

recirculation would not be required, the board may consider the responses to comments, approve the SED, and adopt the project at a subsequent board meeting without accepting any additional public comment.

(f) The state board, when considering approval of a regional board's adoption of an amendment to its water quality control plan or guideline, shall prescribe a comment period of not less than 30 days. The state board may refuse to accept any comments received after the noticed deadline. All comments submitted to the state board must be specifically related to the final amendment adopted by the regional board. If the regional board previously responded to the comment, the commenter must explain why it believes that the regional board's response was inadequate. The commenter must include either a statement that each of the comments was timely raised before the regional board, or an explanation of why the commenter was unable to raise the specific comment before the regional board. The state board may refuse to accept any comments that do not include such a statement. The state board is not required to consider any comment that is not in compliance with this section.

NOTE: AUTHORITY CITED: SECTION 21082, PUBLIC RESOURCES CODE.

REFERENCE: SECTION 21080.5, PUBLIC RESOURCES CODE.

HISTORY

1. Amendment of section heading, repealer and new section and amendment of Note filed 1-19-2011; operative 2-18-2011 (Register 2011, No. 3).

§ 3779.5. Final Substitute Environmental Documentation (SED).

(a) Prior to adopting or approving a project, the board shall consider the materials generated pursuant to sections 3777 through 3779. The board may approve the SED prior to, or at the same time, as it adopts the project. Upon adoption of the resolution adopting the project, the SED shall become final.

(b) The Final SED includes:

(1) The materials described in section 3777:

(2) Comments and Responses to Comments, pursuant to section 3779;

(3) The board resolution adopting the project; and

(4) Other documentation as the board may prescribe.

(c) For each significant impact identified in subdivisions (b)(2) and (b)(4)(B) of section 3777, the board shall adopt findings as described in State CEQA Guidelines section 15091 for significant environmental effects identified in an environmental impact report, and if the project as adopted will result in the occurrence of significant effects that are not avoided or substantially lessened, the board shall adopt a statement described in State CEQA Guidelines section 15093 for similar significant effects identified in an environmental impact report.

NOTE: AUTHORITY CITED: SECTION 21082, PUBLIC RESOURCES CODE.

REFERENCE: SECTION 21080.5, PUBLIC RESOURCES CODE.

HISTORY

1. New section filed 1-19-2011; operative 2-18-2011 (Register 2011, No. 3).

§ 3780. Approval.

(a) The board shall not adopt or approve a project that would cause significant adverse impacts if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant adverse impact that the project may have on the environment.

(b) If the board makes a finding as described in State CEQA Guidelines section 15091, subdivision (a)(1), it shall also adopt a program for monitoring or reporting as described in State CEQA Guidelines section 15097 for mitigated negative declarations and environmental impact reports.

NOTE: AUTHORITY CITED: SECTION 21082, PUBLIC RESOURCES CODE.

REFERENCE: SECTION 21080.5, PUBLIC RESOURCES CODE.

HISTORY

1. Amendment of section and Note filed 1-19-2011; operative 2-18-2011 (Register 2011, No. 3).

§ 3781. Notice of Decision.

(a) Upon final adoption of a project subject to this Article, and upon approval by the Office of Administrative Law, if required, the state board shall file a Notice of Decision in a format similar to the one in Appendix B to this Chapter with the Secretary for Natural Resources.

(b) When a regional board adopts or amends a water quality control plan or guideline and it is approved by the state board, and, if required, the Office of Administrative Law, the state board shall file, on behalf of the regional board, the Notice of Decision with the Secretary for Natural Resources.

NOTE: AUTHORITY CITED: SECTION 21082, PUBLIC RESOURCES CODE.

REFERENCE: SECTION 21080.5, PUBLIC RESOURCES CODE.

HISTORY

1. Amendment of section and Note filed 1-19-2011; operative 2-18-2011 (Register 2011, No. 3).

§ 3782. Exempt Regulatory Programs. [Repealed]

NOTE: AUTHORITY CITED: SECTION 21082, PUBIC RESOURCES CODE.

REFERENCE: SECTION 21080.5, PUBLIC RESOURCES CODE.

HISTORY

1. Repealer filed 1-19-2011; operative 2-18-2011 (Register 2011, No. 3).

Appendix A

Environmental Checklist Form

(To Be Completed By Lead Agency)

THE PROJECT

1. Project title:

_____

2. Lead agency name and address:

_____

_____

3. Contact person and phone number:

_____

4. Project location:

_____

5. Description of project: (Describe the whole action involved, including but not limited to later phases of the project, and any secondary, support, or off-site features necessary for its implementation. Attach additional sheets if necessary. The description may be a summary with a reference to other documents that contain the detailed project description.)

EVALUATION OF THE ENVIRONMENTAL IMPACTS IN THE CHECKLIST

1. The board must complete an environmental checklist prior to the adoption of plans or policies for the Basin/208 Planning program as certified by the Secretary for Natural Resources. The checklist becomes a part of the Substitute Environmental Documentation (SED).

2. For each environmental category in the checklist, the board must determine whether the project will cause any adverse impact. If there are potential impacts that are not included in the sample checklist, those impacts should be added to the checklist.

3. If the board determines that a particular adverse impact may occur as a result of the project, then the checklist boxes must indicate whether the impact is "Potentially Significant," "Less than Significant with Mitigation Incorporated," or "Less than Significant."

a. "Potentially Significant Impact" applies if there is substantial evidence that an impact may be significant. If there are one or more "Potentially Significant Impact" entries on the checklist, the SED must include an examination of feasible alternatives and mitigation measures for each such impact, similar to the requirements for preparing an environmental impact report.

b. "Less than Significant with Mitigation Incorporated" applies if the board or another agency incorporates mitigation measures into the SED that will reduce an impact that is "Potentially Significant" to a "Less than Significant Impact." If the board does not require the specific mitigation measures itself, then the board must be certain that the other agency will in fact incorporate those measures.

c. “Less than Significant” applies if the impact will not be significant, and mitigation is therefore not required.

d. If there will be no impact, check the box under “No Impact.”

4. The board must provide a brief explanation for each “Potentially Significant,” “Less than Significant with Mitigation Incorporated,” “Less than Significant,” or “No Impact” determination in the checklist. The explanation may be included in the written report described in section 3777(a)(1) or in the checklist itself. The explanation of each issue should identify: (a) the significance criteria or threshold, if any, used to evaluate each question; and (b) the specific mitigation measure(s) identified, if any, to reduce the impact to less than significant. The board may determine the significance of the impact by considering factual evidence, agency standards, or thresholds. If the “No Impact” box is checked, the board should briefly provide the basis for that answer. If there are types of impacts that are not listed in the checklist, those impacts should be added to the checklist.

5. The board must include mandatory findings of significance if required by CEQA Guidelines section 15065.

6. The board should provide references used to identify potential impacts, including a list of information sources and individuals contacted.

ISSUES	*Potentially Significant Impact*	*Less than Significant Impact with Mitigation Incorporated*	*Less Than Significant Impact*	*No Impact*
I. AESTHETICS - Would the project:				
a) Have a substantial adverse effect on a scenic vista?	☐	☐	☐	☐
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	☐	☐	☐	☐
c) Substantially degrade the existing visual character or quality of the site and its surroundings?	☐	☐	☐	☐
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?	☐	☐	☐	☐

ISSUES	*Potentially Significant Impact*	*Less than Significant Impact with Mitigation Incorporated*	*Less Than Significant Impact*	*No Impact*
II. AGRICULTURE AND FOREST RESOURCES: In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. In determining whether impacts to forest resources, including timberland, are significant environmental effects, lead agencies may refer to information compiled by the California Department of Forestry and Fire Protection regarding the state's inventory of forest land, including the Forest and Range Assessment Project and the Forest Legacy Assessment Project; and forest carbon measurement methodology provided in Forest Protocols adopted by the California Air Resources Boards. Would the project:				
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	☐	☐	☐	☐
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?	☐	☐	☐	☐
c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))?	☐	☐	☐	☐
d) Result in the loss of forest land or conversion of forest land to non-forest use?	☐	☐	☐	☐
e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest land to non-forest use?	☐	☐	☐	☐

ISSUES	*Potentially Significant Impact*	*Less than Significant Impact with Mitigation Incorporated*	*Less Than Significant Impact*	*No Impact*
III. AIR QUALITY - Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:				
a) Conflict with or obstruct implementation of the applicable air quality plan?	☐	☐	☐	☐
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?	☐	☐	☐	☐
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?	☐	☐	☐	☐
d) Expose sensitive receptors to substantial pollutant concentrations?	☐	☐	☐	☐
e) Create objectionable odors affecting a substantial number of people?	☐	☐	☐	☐
IV. BIOLOGICAL RESOURCES - Would the project:				
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	☐	☐	☐	☐
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or US Fish and Wildlife Service?	☐	☐	☐	☐
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal, pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	☐	☐	☐	☐

ISSUES	*Potentially Significant Impact*	*Less than Significant Impact with Mitigation Incorporated*	*Less Than Significant Impact*	*No Impact*
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	☐	☐	☐	☐
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	☐	☐	☐	☐
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?	☐	☐	☐	☐
V. CULTURAL RESOURCES - Would the project:				
a) Cause a substantial adverse change in the significance of a historical resource as defined in § 15064.5?	☐	☐	☐	☐
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to § 15064.5?	☐	☐	☐	☐
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	☐	☐	☐	☐
d) Disturb any human remains, including those interred outside of formal cemeteries?	☐	☐	☐	☐
VI. GEOLOGY AND SOILS - Would the project:				
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:	☐	☐	☐	☐
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.	☐	☐	☐	☐
ii) Strong seismic ground snaking?	☐	☐	☐	☐
iii) Seismic-related ground failure, including liquefaction?	☐	☐	☐	☐
iv) Landslides?	☐	☐	☐	☐

ISSUES	*Potentially Significant Impact*	*Less than Significant Impact with Mitigation Incorporated*	*Less Than Significant Impact*	*No Impact*
b) Result in substantial soil erosion or the loss of topsoil?	☐	☐	☐	☐
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?	☐	☐	☐	☐
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?	☐	☐	☐	☐
e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?	☐	☐	☐	☐
VII. GREENHOUSE GAS EMISSIONS - Would the project:				
a) Generate Greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?	☐	☐	☐	☐
b) Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?	☐	☐	☐	☐
VIII. HAZARDS AND HAZARDOUS MATERIALS - Would the project:				
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	☐	☐	☐	☐
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	☐	☐	☐	☐
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	☐	☐	☐	☐

ISSUES	*Potentially Significant Impact*	*Less than Significant Impact with Mitigation Incorporated*	*Less Than Significant Impact*	*No Impact*
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	☐	☐	☐	☐
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?	☐	☐	☐	☐
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?	☐	☐	☐	☐
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	☐	☐	☐	☐
h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?	☐	☐	☐	☐
IX. HYDROLOGY AND WATER QUALITY - Would the project:				
a) Violate any water quality standards or waste discharge requirements?	☐	☐	☐	☐
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?	☐	☐	☐	☐
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site?	☐	☐	☐	☐

ISSUES	*Potentially Significant Impact*	*Less than Significant Impact with Mitigation Incorporated*	*Less Than Significant Impact*	*No Impact*
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site?	☐	☐	☐	☐
e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?	☐	☐	☐	☐
f) Otherwise substantially degrade water quality?	☐	☐	☐	☐
g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?	☐	☐	☐	☐
h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows?	☐	☐	☐	☐
i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?	☐	☐	☐	☐
j) Inundation by seiche, tsunami, or mudflow?	☐	☐	☐	☐
X. LAND USE AND PLANNING - Would the project:				
a) Physically divide an established community?	☐	☐	☐	☐
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?	☐	☐	☐	☐
c) Conflict with any applicable habitat conservation plan or natural community conservation plan?	☐	☐	☐	☐
XI. MINERAL RESOURCES - Would the project:				
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	☐	☐	☐	☐

ISSUES	*Potentially Significant Impact*	*Less than Significant Impact with Mitigation Incorporated*	*Less Than Significant Impact*	*No Impact*
b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	☐	☐	☐	☐
XII. NOISE - Would the project result in:				
a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	☐	☐	☐	☐
b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?	☐	☐	☐	☐
c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?	☐	☐	☐	☐
d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?	☐	☐	☐	☐
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?	☐	☐	☐	☐
f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?	☐	☐	☐	☐
XIII. POPULATION AND HOUSING - Would the project:				
a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	☐	☐	☐	☐
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?	☐	☐	☐	☐
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?	☐	☐	☐	☐
XIV. PUBLIC SERVICES				

ISSUES	*Potentially Significant Impact*	*Less than Significant Impact with Mitigation Incorporated*	*Less Than Significant Impact*	*No Impact*
a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:				
Fire protection?	☐	☐	☐	☐
Police protection?	☐	☐	☐	☐
Schools?	☐	☐	☐	☐
Parks?	☐	☐	☐	☐
Other public facilities?	☐	☐	☐	☐
XV. RECREATION				
a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	☐	☐	☐	☐
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?	☐	☐	☐	☐
XVI. TRANSPORTATION/TRAFFIC - Would the project:				
a) Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including, but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit?	☐	☐	☐	☐

ISSUES	*Potentially Significant Impact*	*Less than Significant Impact with Mitigation Incorporated*	*Less Than Significant Impact*	*No Impact*
b) Conflict with an applicable congestion management program, including, but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?	☐	☐	☐	☐
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?	☐	☐	☐	☐
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	☐	☐	☐	☐
e) Result in inadequate emergency access?	☐	☐	☐	☐
f) Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities?	☐	☐	☐	☐
XVII. UTILITIES AND SERVICE SYSTEMS - Would the project:				
a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?	☐	☐	☐	☐
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	☐	☐	☐	☐
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	☐	☐	☐	☐
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?	☐	☐	☐	☐
e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	☐	☐	☐	☐

ISSUES	*Potentially Significant Impact*	*Less than Significant Impact with Mitigation Incorporated*	*Less Than Significant Impact*	*No Impact*
f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?	☐	☐	☐	☐
g) Comply with federal, state, and local statutes and regulations related to solid waste?	☐	☐	☐	☐
XVIII. MANDATORY FINDINGS OF SIGNIFICANCE				
a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?	☐	☐	☐	☐
b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?	☐	☐	☐	☐
c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?	☐	☐	☐	☐

Explanations of Impact Assessment (may also follow checklist sections)

PRELIMINARY STAFF DETERMINATION

- ☐ The proposed project COULD NOT have a significant effect on the environment, and, therefore, no alternatives or mitigation measures are proposed.

□ The proposed project MAY have a significant or potentially significant effect on the environment, and therefore alternatives and mitigation measures have been evaluated.

NOTE: AUTHORITY CITED: SECTION 21082, PUBLIC RESOURCES CODE.

REFERENCE: SECTIONS 21080(C), 21080.1, 21080.3, 21080.5, 21082.1, 21083, 21083.05, 21083.3, 21093, 21094, 21151, PUBLIC RESOURCES CODE; SUNDSTROM V. COUNTY OF MENDOCINO, 202 CAL.APP.3D 296 (1988); AND LEONOFF V. MONTEREY BOARD OF SUPERVISORS, 222 CAL.APP.3D 1337 (1990).

HISTORY

1. Repealer and new Appendix A filed 1-19-2011; operative 2-18-2011 (Register 2011, No. 3).

Appendix B

Notice of Decision

TO: Secretary for Resources
1416 Ninth Street, Room 1311
Sacramento, CA 95814

FROM: _____
_____
_____

SUBJECT: Filing of Notice of Decision in Compliance with Section 21080.5 of the Public Resources Code

Project Proponent: _____
Project Title: _____
Contact Person: _____ Telephone No.: _____
Project Location: _____
Project Description: _____
_____
_____

This is to advise that the _____ has made the following determination regarding the above described project:

The project has been:
___ approved
____ disapproved
Date Received for Filing: _____

_____
Signature of Person Filing Notice

_____
Title

NOTE: AUTHORITY CITED: SECTION 21082, PUBLIC RESOURCES CODE.

REFERENCE: DIVISION 13, PUBLIC RESOURCES CODE.

Appendix C

Notice of Filing

TO: Any Interested Person FROM: _____

_____

_____

SUBJECT: Notice of Filing submitted under California Code of Regulations, Title 23, Section 3779.

Name of Board: _____

Project Title: _____

Contact Person: _____ Telephone No.: _____

Project Location: _____

Project Description: _____

_____

_____

This is to advise that the [name of board] is proposing to adopt or amend the [name of plan or policy] in accordance with a regulatory program exempt under Section 21080.5 of the Public Resources Code from the requirement to prepare an environmental impact report under the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) and with other applicable laws and regulations.

The [name of board] will accept written comments as set forth in the notice published. Written comments must be submitted to the [name of board] by [date] at [time], and shall be submitted to [name and address]. A public hearing for the receipt of oral comments is scheduled for [date] at [time].

Date: _____

_____

Signature of Person Transmitting Notice

_____

Title

NOTE: AUTHORITY CITED: SECTION 21082, PUBLIC RESOURCES CODE.

REFERENCE: SECTION 21080.5, PUBLIC RESOURCE CODE.

HISTORY

1. Amendment of Appendix C and Note filed 1-19-2011; operative 2-18-2011 (Register 2011, No. 3).

CHAPTER 28. CERTIFICATIONS

Article 1. General Provisions

§ 3830. Purpose and Review of Regulations.

(a) Various laws provide for the issuance of certifications by the state board or regional boards. These regulations specify how the state board and the

regional boards implement various certification programs and how the state board acts on petitions for reconsideration of certification actions or failures to act by the executive director, regional boards, and executive officers.

(b) Within five years from the effective date of these regulations, the state board, in consultation with the Secretary for Environmental Protection, shall review the provisions of this Chapter to determine whether they should be retained, revised, or repealed.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: 26 USC SECTION 169, 40 CFR SECTION 20; 15 USC SECTION 636, 40 CFR SECTION 21; 33 USC SECTION 1341; SECTIONS 7, 174, 179, 183, 186, 1059, 13160, 13160.1, 13321, 13350 AND 13396, WATER CODE; AND SECTIONS 44533 AND 44539, HEALTH AND SAFETY CODE.

HISTORY

1. *New subchapter 17 (articles 1-6, sections 3830-3869) filed 9-2-81; effective thirtieth day thereafter (Register 81, No. 36).*
2. *Change without regulatory effect renumbering chapter heading filed 11-10-93 pursuant to section 100, title 1, California Code of Regulations (Register 93, No. 46).*
3. *Amendment of section heading, section and Note filed 5-25-2000; operative 6-24-2000 (Register 2000, No. 21).*

§ 3831. Definitions.

The following words (in alphabetical order), as used in this Chapter, shall have the meaning hereafter ascribed to them unless the context of their use clearly requires a different meaning:

(a) “Activity,” when used in reference to water quality certification, means any action, undertaking, or project - including, but not limited to, construction, operation, maintenance, repair, modification, and restoration - which may result in any discharge to waters of the United States in California.

(b) “Application” means a written request for certification, including accompanying materials.

(c) “Applicant” normally means any individual, entity, district, organization, group, or agency submitting an application, subject to the following caveats:

(1) When a professional agent or firm submits an application on behalf of a client, the client is the applicant.

(2) The person or group financially responsible for an activity seeking a federal license or permit which may result in a discharge to waters of the United States is normally the applicant for water quality certification, but

(3) the federal agency is the applicant when the federal agency requests water quality certification for any discharge which may result from activities to be allowed by that agency under a general license or permit.

(d) “CEQA” means the California Environmental Quality Act (Public Resources Code Section 21000 et seq.).

(e) To take a “certification action” means to issue an order, signed by the proper approving official, granting or denying certification within the time period allowed for certification by the federal agency’s rules.

(f) “Complete application” means:

(1) for purposes of tax certification, an application made on forms provided by EPA and that includes the appropriate fee required pursuant to Section 3833 of this Chapter;

(2) for purposes of water quality certification, an application that includes all information and items and the fee deposit required pursuant to Sections 3833 and 3856 of this Chapter;

(3) for purposes of pollution control certification, an application that includes all information, items, and fees required pursuant to Sections 3833 and 3863 of this Chapter; and

(4) notwithstanding the specific definitions in Subsections (f)(1) through (f)(3) of this Section, any application for certification for a development project for which the application is deemed complete pursuant to the Permit Streamlining Act (Government Code Section 65920 et seq.).

(g) “CFR” means the Code of Federal Regulations.

(h) “Denial without prejudice” means an inability to grant certification for procedural rather than substantive reasons. This form of denial carries with it no judgement on the technical merits of the activity or compliance of any discharge with water quality standards. A certifying agency may reconsider a revised application package which corrects the procedural problems that caused the original denial without prejudice.

(i) “EPA” means the United States Environmental Protection Agency.

(j) “Executive director” means the chief administrative officer of the state board or the executive director’s designee.

(k) “Executive officer” means the chief administrative officer of a regional board.

(l) “Federal agency” means, for purposes of water quality certification:

(1) the federal agency responsible for issuing a license or permit for an activity resulting in a possible discharge for which an application for certification is submitted, or

(2) a federal agency applying for water quality certification (see definition of “applicant”).

(m) “FERC” means the Federal Energy Regulatory Commission.

(n) “Pollution control certification” means a certification that a project will further comply with federal, state or local pollution control standards and requirements and is eligible for financing under the California Pollution Control Financing Authority Act (Health and Safety Code, Division 27, commencing with Section 44502).

(o) "Regional board" means a California Regional Water Quality Control Board.

(p) "Standard certification" means a water quality certification subject only to the conditions specified in Section 3860 of this Chapter.

(q) "State board" means the State Water Resources Control Board.

(r) "Tax Certification" means a certification that a treatment facility qualifies as a certified pollution control facility within the meaning of Section 169 of the Internal Revenue Code of 1954.

(s) "USC" means United States Code.

(t) "Water Code" means the California Water Code.

(u) "Water quality certification" means a certification that any discharge or discharges to waters of the United States, resulting from an activity that requires a federal license or permit, will comply with water quality standards and other appropriate requirements.

(v) "Water quality standards and other appropriate requirements" means the applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act (33 USC Sections 1311, 1312, 1313, 1316, 1317), and any other appropriate requirements of state law.

(w) "Waters of the United States" means surface water and water bodies as defined by EPA regulations (e.g., 40 CFR Section 122.2). All waters of the United States in California are also "waters of the state" (defined by the Porter-Cologne Water Quality Control Act as "any surface water or ground water, including saline waters, within the boundaries of the state." [Water Code Section 13050(e)]). Not all waters of the state (e.g., ground water) are waters of the United States.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: 26 USC SECTION 169, 40 CFR SECTION 20; 15 USC SECTION 636, 40 CFR SECTION 21; 33 USC SECTION 1341; 40 CFR SECTION 131.3; 40 CFR SECTION 122.2; SECTIONS 7, 1003.5, 1059, 13050, 13160, 13160.1 AND 13350, WATER CODE; SECTIONS 44533 AND 44539, HEALTH AND SAFETY CODE; SECTION 21000 ET SEQ. (CEQA), PUBLIC RESOURCES CODE; AND SECTION 15000 ET SEQ., STATE CEQA GUIDELINES.

HISTORY

1. Amendment of section heading, section and Note filed 5-25-2000; operative 6-24-2000 (Register 2000, No. 21).

§ 3832. Number of Copies.

Two copies of each application shall be submitted.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: 26 USC SECTION 169, 40 CFR SECTION 20; 15 USC SECTION 636, 40 CFR SECTION 21; 33 USC SECTION 1341; SECTION 13160, WATER CODE; AND SECTIONS 44533 AND 44539, HEALTH AND SAFETY CODE.

HISTORY

1. Amendment of Note filed 5-25-2000; operative 6-24-2000 (Register 2000, No. 21).

§ 3833. Application Fees and Refunds.

(a) Each application for a Tax Certification shall be accompanied by a fee of $200.

(b) Each application for a Water Quality Certification shall be accompanied by a fee deposit for processing the application. Processing the application includes evaluating the activity proposed in the application and determining whether the certification should be issued and what conditions, if any, should be imposed on the certification.

(1) If the activity subject to certification includes, or involves construction or modification of facilities for the purpose of, producing hydroelectric power, and the activity or facilities require the issuance or amendment of a FERC license, a deposit in the amount of any annual fees due under section 3833.1 that have not yet been paid shall accompany the application.

(2) If the activity is not subject to subsection (b)(1) of this section but is subject to subparagraph (b)(1)(B) of section 3855, then an initial deposit shall accompany the application, and subsequent deposits shall be required as necessary to cover the state board's reasonable costs of processing the application as follows:

(A) An initial deposit of $1,000 shall accompany all applications.

(B) If the state board's reasonable costs exceed $750, the applicant shall provide a second deposit in the amount of the unpaid reasonable costs, if any, plus $5,000, or a lesser amount estimated by the state board to be necessary to complete processing the application.

The state board may require additional deposits when the state board's reasonable costs exceed the total amount previously deposited less $2,000. The additional deposits shall be in the amount of the state board's unpaid reasonable costs, if any, plus $5,000, or a lesser amount that the state board estimates to be necessary to complete processing the application. The state board shall notify the applicant by certified mail of any deposits required under this subsection (b)(1)(B), and the deposit shall be due within sixty (60) days from receipt of the notice.

(C) After the state board acts on the application, or if the applicant withdraws the application, the applicant shall make a final payment so that the total fee paid by the applicant equals the reasonable costs incurred by the state board in processing the application. The state board shall notify the applicant by certified mail if the applicant owes a final payment on the application fee, and the final payment shall be due within sixty (60) days from receipt of the notice. If the deposit(s) exceed the state board's reasonable costs, the state board shall refund the excess amount to the applicant within sixty (60) days of final action on the application.

(D) For the purposes of this subsection (b)(2), the reasonable costs of processing the application include the state board's reasonable costs incurred in

anticipation of the filing of an application, including participation in pre-filing consultation and any investigations or studies to evaluate the impacts of the proposed activity, to the extent that these costs are reasonably necessary to process the subsequently filed application. The state board's reasonable costs include any reasonable costs of processing the application incurred by a regional board at the state board's request. The state board may seek reimbursement of costs pursuant to this subsection (b)(2) only after the applicant has submitted an application to the state board.

(E) If the activity subject to water quality certification is also the subject of a pending application, petition, or registration subject to section 1062, 1064, 1067 or 1068 of this division, and the application, petition, or registration is filed before or simultaneously with the application for certification, the applicant shall pay only the fees imposed under chapter 5 (commencing with section 1061) of this division, and no additional deposit is required under this subsection (b)(2).

(3) If the activity is not subject to Subsection (b)(1) or (b)(2) of this Section, then:

(A) A deposit consisting of the appropriate application fee determined from Section 2200, Title 23, of the California Code of Regulations shall accompany all applications.

(B) The total fee, including deposit, for taking any certification action shall be the appropriate amount determined from Section 2200, Title 23, of the California Code of Regulations.

(C) If waste discharge requirements or a waiver of waste discharge requirements are to be issued in conjunction and simultaneously with taking action on the application for water quality certification, or the project is to be regulated through general waste discharge requirements or general waivers thereof, the applicant shall pay only one fee.

(4) If a revised application for water quality certification is filed for the same project that had been previously denied certification without prejudice or when an original application is voluntarily withdrawn by the applicant pursuant to Subsections 3835(b), 3836(b), 3836(c), or 3838(c) of this Chapter, the revised application shall be accompanied by any unpaid fee or portion thereof for the original application. Except as provided in this Section, no additional fee shall be required for the revised application if:

(A) the revised application is filed within twelve (12) months of the denial without prejudice or voluntary application withdrawal,

(B) the revised application package corrects the procedural problems which caused the original denial without prejudice or voluntary application withdrawal, and

(C) the project has not changed significantly in scope or potential for adverse impact (i.e., no further technical review is necessary).

(c) The fee for processing an application if a specific fee is not established under this section shall be set at the hourly rate specified in Section 2200.4, Title 23, of the California Code of Regulations. An initial deposit of $500 shall accompany all such applications.

(d) The fees described in this Section do not include the costs of preparation of any CEQA document, should one be required.

(e) Denial of certification shall not be grounds for refund of any part of a certification application fee.

(f) If the applicant is a federal agency, the fees described in this Section apply to the extent authorized by federal law.

NOTE: AUTHORITY CITED: SECTIONS 1058 AND 13160.1, WATER CODE.

REFERENCE: 26 U.S.C. SECTION 169, 40 CFR SECTION 20; 33 U.S.C. SECTION 1341; AND SECTIONS 1060, 13160 AND 13160.1, WATER CODE.

HISTORY

1. *Amendment filed 8-1-90 as an emergency; operative 8-1-90. Submitted to OAL for printing only pursuant to Water Code section 13262 (Register 90, No. 39).*
2. *Amendment of section and N ote filed 5-25-2000; operative 6-24-2000 (Register 2000, No. 21).*
3. *Amendment of section heading, section and N ote filed 12-23-2003 as an emergency; operative 1-1-2004 (Register 2003, No. 52). Pursuant to Water Code section 13160.1 this rulemaking action remains in effect until revised by the State Water Resources Control Board.*
4. *Amendment of subsections (b)(3)(A)-(C) filed 10-30-2014 as an emergency; operative 10-30-2014. Submitted to OAL for printing only pursuant to Water Code section 13260(f), which provides that a regulation shall be deemed an emergency, shall not be subject to OAL review, and shall remain in effect until revised by the State Water Resources Control Board (Register 2014, No. 44).*

§ 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 $ 0.430 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 $0.125 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.

HISTORY

1. *New section filed 12-23-2003 as an emergency; operative 1-1-2004 (Register 2003, No. 52). Pursuant to Water Code section 13160.1 this rulemaking action remains in effect until revised by the State Water Resources Control Board.*
2. *Amendment of subsections (b)(4) and (c)(1) filed 10-14-2004 as an emergency; operative 10-14-2004 (Register 2004, No. 42). Pursuant to Water Code section 1530, this rulemaking action remains in effect until revised by the State Water Resources Control Board.*
3. *Amendment of subsections (b)(4) and (c)(1) filed 10-21-2005 as an emergency; operative 10-21-2005. Water Code section 13160.1 provides that this filing shall be deemed an emergency and shall remain in effect until revised by the State Water Resources Control Board (Register 2005, No. 42).*
4. *Change without regulatory effect amending subsection (b)(2)(A) filed 1-29-2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 5).*
5. *Editorial correction of History 3 (Register 2008, No. 45).*
6. *Amendment of subsection (b)(3)(C), (b)(4) and (c)(1) filed 11-5-2008 as an emergency; operative 11-5-2008. Water Code section 13160.1 provides that this filing shall be deemed an emergency and shall remain in effect until revised by the State Water Resources Control Board (Register 2008, No. 45).*

7. Amendment of subsections (a)(4) and (c)(1) filed 11-17-2010 as an emergency; operative 11-17-2010 (Register 2010, No. 47). Water Code section 13160.1 provides that the regulation shall be deemed an emergency and shall remain in effect until revised by the State Water Resources Control Board.

8. Amendment of subsection (b)(4) filed 10-30-2014 as an emergency; operative 10-30-2014. Water Code section 13160.1 provides that the regulation shall be deemed an emergency and shall remain in effect until revised by the State Water Resources Control Board (Register 2014, No. 44).

§ 3834. Amendments to Applications.

An amendment to an application prior to a certification action being taken shall be submitted in the same manner as the original application and shall be considered a part of the application it amends. No additional fee shall be required for an amendment to an application prior to a certification action unless the activity's size, design, scope, or potential for adverse impact has changed significantly, prompting the need for further technical or administrative review or otherwise triggering a larger fee as required pursuant to Section 3833 of this Chapter.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: 26 USC SECTION 169, 40 CFR SECTION 20; 15 USC SECTION 636, 40 CFR SECTION 21; 33 USC SECTION 1341; SECTIONS 13160 AND 13160.1, WATER CODE; AND SECTIONS 44533 AND 44539, HEALTH AND SAFETY CODE.

HISTORY

1. Amendment of section and Note filed 5-25-2000; operative 6-24-2000 (Register 2000, No. 21).

§ 3835. Complete, Incomplete, and Valid Applications.

(a) Upon receipt of an application, it shall be reviewed by the certifying agency to determine if it is complete. If the application is incomplete, the applicant shall be notified in writing no later than 30 days after receipt of the application, of any additional information or action needed.

(b) If an application is determined to be incomplete by the certifying agency, an extension of the federal period for certification cannot be obtained, and the federal period for certification will expire before the certifying agency can receive and properly review the missing information, the certifying agency shall deny without prejudice certification for any discharge resulting from the proposed activity unless the applicant in writing withdraws the request for certification.

(c) When a complete application is received, the applicant, the federal agency, and EPA shall be notified no later than 30 days after receipt of the application.

(d) A request for certification shall be considered valid if and only if a complete application is received by the certifying agency.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: 26 USC SECTION 169, 40 CFR SECTION 20; 15 USC SECTION 636, 40 CFR SECTION 21; 33 USC SECTION 1341; SECTION 13160, WATER CODE; SECTIONS 44533 AND 44539, HEALTH AND SAFETY CODE; AND SECTION 65943, GOVERNMENT CODE.

HISTORY

1. Amendment of section heading, section and Note filed 5-25-2000; operative 6-24-2000 (Register 2000, No. 21).

§ 3836. Additional Information.

(a) Once a certifying agency determines that an application is complete, it may request further information from the applicant. Such information must clarify, amplify, correct, or otherwise supplement the contents of a complete application in order for the certifying agency to determine whether a certification should be issued. Supplemental information may include evidence of compliance with appropriate requirements of a water quality control plan.

(b) If an application is determined to be complete by the certifying agency but supplemental information is requested by the certifying agency pursuant to Subsection (a) of this Section, an extension of the federal period for certification cannot be obtained, and the federal period for certification will expire before the certifying agency can receive and properly review the supplemental information, the certifying agency shall deny without prejudice certification for any discharge resulting from the proposed activity unless the applicant in writing withdraws the request for certification.

(c) If an application is determined to be complete by the certifying agency, but CEQA requires that the certifying agency review a final environmental document before taking a certification action, an extension of the federal period for certification cannot be obtained, and the federal period for certification will expire before the certifying agency can receive and properly review the necessary environmental documentation, the certifying agency shall deny without prejudice certification for any discharge resulting from the proposed activity unless the applicant in writing withdraws the request for certification.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: 26 USC SECTION 169, 40 CFR SECTION 20; 15 USC SECTION 636, 40 CFR SECTION 21; 33 USC SECTION 1341; 40 CFR SECTION 121.2; SECTIONS 13160 AND 13160.1, WATER CODE; SECTIONS 44533 AND 44539, HEALTH AND SAFETY CODE; SECTIONS 21100 AND 21100.2, (CEQA) PUBLIC RESOURCES CODE; AND SECTION 15111, STATE CEQA GUIDELINES.

HISTORY

1. Amendment of section and Note filed 5-25-2000; operative 6-24-2000 (Register 2000, No. 21).

§ 3837. Denial of Certification.

(a) If certification is denied, the applicant shall be notified in writing of the denial and the reasons for the denial. Written notification of the denial shall be

sent to the applicant, the state board or appropriate regional board(s), the federal agency, EPA, and other persons and agencies known to be interested no later than three (3) days after taking the certification (denial) action.

(b) An application for water quality certification may be denied when:

(1) the activity requiring a federal license or permit will result in a discharge which will not comply with applicable water quality standards and other appropriate requirements; or

(2) compliance with water quality standards and other appropriate requirements is not yet necessarily determined, but the application suffers from some procedural inadequacy (e.g., failure to provide a complete fee or to meet CEQA requirements). In this case denial shall be without prejudice.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: 26 USC SECTION 169, 40 CFR SECTION 20; 15 USC SECTION 636, 40 CFR SECTION 21; 33 USC SECTION 1341; SECTION 13160, WATER CODE; AND SECTIONS 44533 AND 44539, HEALTH AND SAFETY CODE.

HISTORY

1. Amendment of section and Note filed 5-25-2000; operative 6-24-2000 (Register 2000, No. 21).

§ 3838. Authority of Executive Director, Executive Officers, and Regional Boards.

(a) The executive director, or his/her designee, is authorized to take all actions connected with applications for certification, including issuance and denial of certification.

(b) An executive officer is authorized to receive applications for water quality certification and to take water quality certification action on activities associated with such applications within the executive officer's region of jurisdiction, except as otherwise provided in Subsection 3855(b) of this Chapter.

(c) A regional board, at its discretion, may take any action its executive officer is authorized to take under Subsection (b) of this Section. If a regional board directs that a water quality certification action will be taken by that regional board, but an extension of the federal period for certification cannot be obtained, and the federal period for certification will expire before the regional board can take an action, the executive officer shall deny without prejudice certification for any discharge resulting from the proposed activity before the period allowed for certification expires, unless the applicant in writing withdraws the request for certification. Such denial shall be in effect only until the regional board takes an action on the request for certification. The applicant shall not be required to submit a new application or supply an additional fee before the regional board takes an action, unless the project changes significantly in scope or potential for adverse impact and further technical review is necessary.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: 26 USC SECTION 169, 40 CFR SECTION 20; 15 USC SECTION 636, 40 CFR SECTION 21; 33 USC SECTION 1341; SECTIONS 7, 1059 AND 13160, WATER CODE; AND SECTIONS 44533 AND 44539, HEALTH AND SAFETY CODE.

HISTORY

1. Amendment of section heading, section and Note filed 5-25-2000; operative 6-24-2000 (Register 2000, No. 21).

Article 2. Tax Certifications

§ 3841. Application Forms; Compliance with Federal Regulations.

(a) Applications shall be made on forms provided by EPA.

(b) Issuance of Tax Certifications is subject to compliance with applicable federal regulations (current federal regulations are contained in 40 CFR Part 20).

NOTE: AUTHORITY CITED: SECTIONS 1058, 13160, AND 13160.1, WATER CODE.

REFERENCE: 26 USC 169, 40 CFR 20.

§ 3842. Filing of Application.

The application shall be filed with the executive officer of the regional board having jurisdiction over any discharge. If no discharge will occur, the application shall be filed with the executive officer of the regional board having jurisdiction over the site of the facility.

NOTE: AUTHORITY CITED: SECTIONS 1058, 13160, AND 13160.1, WATER CODE.

REFERENCE: 26 USC 169, 40 CFR 20.

§ 3843. Reports of Waste Discharge.

The application shall be accompanied by a report of waste discharge or a report of material change in waste discharge as required by Water Code Section 13260 unless there are existing waste discharge requirements for the facility, or the facility discharges to a community sewer system.

NOTE: AUTHORITY CITED: SECTIONS 1058, 13160, AND 13160.1, WATER CODE.

REFERENCE: 26 USC 169, 40 CFR 20.

§ 3844. Regional Board Action.

(a) The regional board executive officer shall promptly review the completed application and shall recommend either issuance or denial of the certification by the state board. A recommendation to deny shall be accompanied by a report detailing the reasons for the recommendation.

(b) If the review indicates that adoption or revision of waste discharge requirements is necessary, action to adopt or revise the waste discharge requirements shall be immediately undertaken.

NOTE: AUTHORITY CITED: SECTIONS 1058, 13160, AND 13160.1, WATER CODE.

REFERENCE: 26 USC 169, 40 CFR 20.

§ 3845. Issuance of Certification.

(a) After review of the regional board recommendation, the executive director shall issue or deny the certification.

(b) The certification shall be issued if the executive director determines that the facility is in conformity with state programs and requirements for abatement or control of water pollution.

(c) If issued, the certification will be forwarded to EPA. A copy of the certification will be sent to the appropriate regional board and the applicant.

NOTE: AUTHORITY CITED: SECTIONS 1058, 13160, AND 13160.1, WATER CODE.
REFERENCE: 26 USC 169, 40 CFR 20.

Article 3. Small Business Certifications

§ 3848. Federal Regulations; Delegation.

NOTE: AUTHORITY CITED: SECTIONS 1058 AND 13160, WATER CODE.
REFERENCE: 15 USC 636, 40 CFR 21.

HISTORY

1. Repealer of article 3 (sections 3848-3852) and section filed 1-9-97; operative 2-8-97 (Register 97, No. 2).

§ 3849. Filing of Applications.

NOTE: AUTHORITY CITED: SECTIONS 1058 AND 13160, WATER CODE.
REFERENCE: 15 USC 636, 40 CFR 21.

HISTORY

1. Repealer filed 1-9-97; operative 2-8-97 (Register 97, No. 2).

§ 3850. Content of Applications.

NOTE: AUTHORITY CITED: SECTIONS 1058 AND 13160, WATER CODE.
REFERENCE: 15 USC 636, 40 CFR 21.

HISTORY

1. Repealer filed 1-9-97; operative 2-8-97 (Register 97, No. 2).

§ 3851. Review and Issuance of Certifications.

NOTE: AUTHORITY CITED: SECTIONS 1058 AND 13160, WATER CODE.
REFERENCE: 15 USC 636, 40 CFR 21.

HISTORY

1. Repealer filed 1-9-97; operative 2-8-97 (Register 97, No. 2).

§ 3852. Utilization of Certification.

NOTE: AUTHORITY CITED: SECTIONS 1058 AND 13160, WATER CODE.
REFERENCE: 15 USC 636, 40 CFR 21.

HISTORY

1. Repealer filed 1-9-97; operative 2-8-97 (Register 97, No. 2).

Article 4. Water Quality Certification

§ 3855. Filing of Application.

(a)(1) An application for water quality certification shall be filed with the regional board executive officer in whose region a discharge may occur except as provided in Subsection (b) of this Section.

(2) Notice of the application shall be sent by the applicant to the state board executive director whenever the proposed activities may involve a FERC-licensed facility.

(b)(1) An application for water quality certification shall be filed with the state board executive director, and notification of the application provided by the applicant to each regional board executive officer in whose region a discharge may occur, whenever a potential discharge from a proposed activity:

(A) may fall under the jurisdiction of more than one regional board, or

(B) is involved or associated with one or more of the following:

1. an appropriation of water, subject to Part 2 (commencing with Section 1200) of Division 2 of the Water Code;

2. a hydroelectric facility, and the proposed activity requires a FERC license or amendment to a FERC license; or

3. any other diversion of water for domestic, irrigation, power, municipal, industrial, or other beneficial use.

(2)(A) For an application subject to Subsection (b)(1)(A) of this Section, copies of the application shall be provided by the applicant to the executive officers of those regional board regions that may be affected by a proposed activity. Those executive officers shall transmit to the executive director, before the federal period for certification expires, any appropriate recommendations and conditions necessary to ensure that the proposed activities will comply with water quality standards and other appropriate requirements within their regions.

(B) For applications subject to Subsection (b)(1)(B) of this Section, the executive director shall forward to the executive officer of the appropriate regional board copies of any portions of the application that may be relevant to adverse water quality impacts, other than specific impacts resulting from alteration/modification to instream flows, from the proposed activity. The executive officer shall review for water quality concerns the relevant portions of the application and transmit back to the executive director any appropriate recommendations and conditions necessary to ensure that the activity will comply with water quality standards and other appropriate requirements.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: 33 USC SECTION 1341; AND SECTIONS 1059 AND 13160, WATER CODE.

HISTORY

1. Amendment of section and Note filed 5-25-2000; operative 6-24-2000 (Register 2000, No. 21).

§ 3856. Contents of a Complete Application.

A complete application shall include all of the following information and items:

(a) The name, address, and telephone number of:

(1) the applicant, and

(2) the applicant's agent (if an agent is submitting the application).

(b) A full, technically accurate description, including the purpose and final goal, of the entire activity.

(c) Complete identification of all federal licenses/permits being sought for or applying to the proposed activity, including the:

(1) federal agency;

(2) type (e.g., individual license, regional general permit, nationwide permit, etc.);

(3) license/permit number(s) (e.g., nationwide permit number), if applicable; and

(4) file number(s) assigned by the federal agency(ies), if available.

(d) Complete copies of either:

(1) the application(s) for federal license(s)/permit(s) being sought for the activity, or,

(2) if no federal applications are required, any notification(s) concerning the proposed activity issued by the federal agency(ies), or,

(3) if no federal notifications are issued, any correspondence between the applicant and the federal agency(ies) describing or discussing the proposed activity.

If no application, notification, correspondence or other document must be exchanged between the applicant and federal agency(ies) prior to the start of the activity, the application shall include a written statement to this effect.

(e) Copies of any final and signed federal, state, and local licenses, permits, and agreements (or copies of the draft documents, if not finalized) that will be required for any construction, operation, maintenance, or other actions associated with the activity. If no final or draft document is available, a list of all remaining agency regulatory approvals being sought shall be included.

If the federal licenses or permits required for the activity include a FERC license or amendment to a FERC license, a complete copy of a draft application for the FERC license or amendment of the FERC license meeting the requirements of Subsection 4.38(c)(4) of Title 18 of the Code of Federal Regulations is required.

(f) A copy of any draft or final CEQA document(s), if available, prepared for the activity. Although CEQA documentation is not required for a complete application, the certifying agency shall be provided with and have ample time to properly review a final copy of valid CEQA documentation before taking a certification action.

(g) The correct fee deposit, as identified in Section 3833 of this Chapter.

(h) A complete project description, including:

(1) Name(s) of any receiving water body(ies) that may receive a discharge.

(2) Type(s) of receiving water body(ies) (e.g., at a minimum: river/streambed, lake/reservoir, ocean/estuary/bay, riparian area, or wetland type).

(3) Location of the activity area in latitude and longitude, in township/range, or clearly indicated on a published map of suitable detail, quality, and scale to allow the certifying agency to easily identify the area and water body(ies) receiving any discharge.

(4) For each water body type reported under Subsection (h)(2) of this Section, the total estimated quantity of waters of the United States that may be adversely impacted temporarily or permanently by a discharge or by dredging.

The estimated quantity of waters to be adversely impacted by any discharge shall be reported in acres and (for channels, shorelines, riparian corridors, and other linear habitat) linear feet, except that dredging estimates shall be reported in cubic yards.

(5) The total estimated quantity (in acres and, where appropriate, linear feet) of waters of the United States, by type (see Subsection (h)(2) of this Section) proposed to be created, restored, enhanced, purchased from a mitigation or conservation bank, set aside for protection, or otherwise identified as compensatory mitigation for any anticipated adverse impacts. If compensatory mitigation is to be provided in some other form, that shall be explained.

(6) A description of any other steps that have been or will be taken to avoid, minimize, or compensate for loss of or significant adverse impacts to beneficial uses of waters of the state.

(7) The total size (in acres), length (in feet) where appropriate, type, and description of the entire project area, including areas outside of jurisdictional waters of the United States.

(8) A brief list/description, including estimated adverse impacts of any projects implemented by the applicant within the last five years or planned for implementation by the applicant within the next five years that are in any way related to the proposed activity or that may impact the same receiving water body(ies) as the proposed activity. For purposes of this item, the water body extends to a named source or stream segment identified in the relevant basin plan.

A complete application for water quality certification need not contain unnecessarily duplicative information. If the copy of a federal application contains information requested in this Section, that specific information need not be provided elsewhere in the application provided that the application clearly indicates where all required information and items are to be found.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: 33 USC SECTION 1341; 40 CFR SECTION 121.2; SECTIONS 13160 AND 13160.1, WATER CODE; AND SECTION 21080, PUBLIC RESOURCES CODE.

HISTORY

1. Amendment of section heading, section and Note filed 5-25-2000; operative 6-24-2000 (Register 2000, No. 21).

§ 3857. Waste Discharge Requirements.

Nothing in this article is intended to limit or prevent the state board or regional boards in any way from issuing or waiving issuance of waste discharge requirements for any activity.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: 33 USC SECTION 1341; AND SECTIONS 13160, 13260 AND 13263; WATER CODE.

HISTORY

1. Amendment of section heading, repealer and new section, and amendment of Note filed 5-25-2000; operative 6-24-2000 (Register 2000, No. 21).

§ 3858. Public Notice and Hearings.

(a) The executive director or the executive officer with whom an application for certification is filed shall provide public notice of an application at least twenty-one (21) days before taking certification action on the application, unless the public notice requirement has been adequately satisfied by the applicant or federal agency. If the applicant or federal agency provides public notice, it shall be in a manner and to an extent fully equivalent to that normally provided by the certifying agency. If an emergency requires that certification be issued in less than 21 days, public notice shall be provided as much in advance of issuance as possible, but no later than simultaneously with issuance of certification.

(b) The state board or a regional board may hold a public hearing with respect to any application for certification.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.
REFERENCE: 33 USC SECTION 1341; AND SECTIONS 179, 183, 1059 AND 13160, WATER CODE.

HISTORY

1. Amendment of section heading, section and Note filed 5-25-2000; operative 6-24-2000 (Register 2000, No. 21).

§ 3859. Action on an Application.

(a) After review of the application, all relevant data, and any recommendations of a regional board, other state and federal agencies, and any interested person, the state board, the executive director, when acting as the state board's designee, or executive officer, as provided in Subsection (c) of this Section, shall issue certification or deny certification for any discharge resulting from a pertinent activity before the federal period for certification expires. Conditions shall be added to any certification, if necessary, to ensure that all

activities will comply with applicable water quality standards and other appropriate requirements. Copies of any certification or denial of certification issued shall be sent to the applicant, the state board (if not the certifying agency), appropriate regional board(s) (if not the certifying agency[ies]), EPA, the federal agency, and all other parties known to be interested no later than three (3) days, after taking the certification action. A written certification or denial shall include:

(1) the name(s) of the receiving water body(ies) and the number(s) of the hydrologic unit(s) that contain(s) the receiving water body(ies), if available;

(2) the certification action being taken and a complete list of any conditions; and

(3) a suitable summary of the information provided by the applicant as listed in Subsections 3856(a), (b), (c), and (h) of this Chapter.

(b) After such review, if it is clear that all proposed activity(ies) will comply with water quality standards and other appropriate requirements, the state board, executive director, regional board, or executive officer, as provided in Subsection 3859(c) of this Chapter, may issue a standard certification, subject only to the conditions in Section 3860 of this Chapter.

(c) For applications submitted pursuant to Subsection 3855(a) of this Chapter, the regional board or executive officer shall take a certification action under this Section. For applications submitted pursuant to Subsection 3855(b) of this Chapter, the state board or executive director shall take a certification action under this Section.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: 33 USC SECTION 1341; AND SECTIONS 1059 AND 13160, WATER CODE.

HISTORY

1. Amendment of section heading, section and Note filed 5-25-2000; operative 6-24-2000 (Register 2000, No. 21).

§ 3860. Standard Conditions.

The following shall be included as conditions of all water quality certification actions:

(a) Every certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Section 13330 of the Water Code and Article 6 (commencing with Section 3867) of this Chapter.

(b) Certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a FERC license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to Subsection 3855(b) of this Chapter and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.

(c) Certification is conditioned upon total payment of any fee required under this Chapter and owed by the applicant.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: 33 USC SECTION 1341; AND SECTIONS 1059, 13160, 13160.1 AND 13321, WATER CODE.

HISTORY

1. New section filed 5-25-2000; operative 6-24-2000 (Register 2000, No. 21).

§ 3861. Water Quality Certification for Classes of Activities.

(a) A certifying agency may, on its own motion, take a "general" certification action on discharges within its own geographic area of jurisdiction that may result from a class or classes of activities. No application is required for a general certification action issued under this Section.

(b) A class of activities receiving general certification shall:

(1) consist of the same or similar types of activities;

(2) involve the same or similar types of discharges and possible adverse impacts requiring the same or similar certification conditions or limitations in order to alleviate potential adverse impacts to water quality; and

(3) be determined by the certifying agency to more appropriately be regulated under a general certification action than under individual certification actions.

(c) General certification:

(1) shall apply only to activities subject to federal licenses and permits, issued in reliance on such certification, during a fixed term not to exceed five years after the general certification is issued;

(2) shall require public notification at least 45 days before general certification is issued;

(3) shall be conditioned to require subsequent notification to the appropriate regional board(s) and to the state board by proponents of projects to which the action applies no less than 21 days before any activity which may result in a discharge is commenced; and to include appropriate monitoring and agency-reporting requirements for all activities subject to federal licenses and permits issued in reliance on such certification;

(4) may require payment of the notification fee from Subsection 3833(b)(3) of this Chapter by project proponents;

(5) shall meet all other applicable requirements of this Chapter and CEQA.

(d) A certifying agency may issue general certification only if the activities to be certified individually or cumulatively will not have any of the following impacts, taking into account the probable effectiveness of any conditions or certification in avoiding or mitigating such impacts:

(1) Significant adverse impacts on water quality that could feasibly be avoided if individual certification, for proposed activities seeking individual federal licenses or permits, was issued.

(2) Violation of any water quality objectives adopted or approved under Sections 13170 or 13245 of the Water Code.

(3) The taking of any candidate, threatened, or endangered species or the violation of the federal Endangered Species Act (16 USC Section 1531 et seq.) or the California Endangered Species Act (Fish and Game Code Section 2050 et seq.).

(4) Exposure of people or structures to potential substantial adverse effects - including the risk of loss, injury, or death - from flooding, landslides, or soil erosion.

(e) The certifying agency may review and revise or revoke (change) a general certification. Any change to a general certification made by the certifying agency pursuant to this subsection shall not apply to activities subject to a federal license or permit issued before such a change is made.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: 33 USC SECTION 1341; AND SECTIONS 1059, 13160, 13160.1 AND 13321, WATER CODE.

HISTORY

1. New section filed 5-25-2000; operative 6-24-2000 (Register 2000, No. 21).

Article 5. Pollution Control Certifications

§ 3862. Filing of Applications.

All applications for Pollution Control Certification shall be filed with the California Pollution Control Financing Authority as a part of any application for financing from the Authority.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 44533 AND 44539, HEALTH AND SAFETY CODE.

§ 3863. Contents of Application.

Applications shall include:

(a) A detailed description of the proposed project, the need for the project and the manner in which the project, as designed, will further compliance with federal, state or local water pollution standards and requirements.

(b) A copy of the federal, state or local water pollution standard and requirement involved.

(c) A copy of any report of waste discharge filed by the applicant in connection with the project, and any waste discharge requirements adopted or proposed for the project.

(d) If the project involves wastewater treatment facilities, a detailed description of how the facilities will be operated, including operating

procedures, organizational structure, minimum personnel requirements for proper operation and maintenance, and operator training programs.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 44533 AND 44539, HEALTH AND SAFETY CODE.

§ 3864. Review of Applications, Issuance of Certifications.

(a) Applications will normally be reviewed and certifications issued by the regional board having jurisdiction over any discharge of waste to waters of the state connected with the project. If the project does not involve a discharge, review and certification will be handled by the regional board having jurisdiction over the site of the project.

(b) Upon request of the Authority, or of a regional board, review and issuance of certification may be handled by the state board.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: SECTIONS 44533 AND 44539, HEALTH AND SAFETY CODE.

Article 6. Petitions to State Board

§ 3867. Petitions for State Board Reconsideration.

(a)(1) An aggrieved person may petition the state board to reconsider an action or failure to act taken by the executive director, a regional board, or an executive officer under Articles 1 through 5 of this Chapter. The executive director may be designated by the state board to reconsider such an action or failure to act by an executive officer or regional board.

(2) A fee determination under subdivision (1) of subdivision (b) of section 3833 or section 3833.1, made by the state board or by an officer or employee of the board acting under delegated authority, is subject to reconsideration in accordance with chapter 4 (commencing with Section 1120) of part 1 of division 2 of the Water Code and the procedures set forth in Article 12 (commencing with section 768) of chapter 2 of division 3 of this title, and is not subject to the procedures set forth in this section. 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.

(b)(1) The state board and the executive director, when acting as the state board's designee, may undertake such reconsideration on their own motion. They shall notify the applicant (if any), the federal agency, and all interested persons known to the state board or executive director and give those notified the opportunity to submit information and comments before taking a final reconsideration action (as listed in Subsection 3869(a) of this Chapter).

(2) If such reconsideration is initiated more than thirty (30) days after the certification action in question, any rescission or amendment of the certification action resulting from such reconsideration shall not apply to any activities subject to a federal license or permit that:

(A) was issued in reliance on that certification action, and

(B) was issued before the federal agency was notified that such reconsideration had been initiated.

(3) Nothing in Subsection (b) of this Section is intended to limit the authority of a federal agency to issue a new or amended license or permit that incorporates any changes ordered by the state board or executive director following reconsideration of a certification action.

(c) A petition for reconsideration shall be submitted in writing to and received by the state board within 30 days of any action or failure to act taken by the executive director, a regional board, or an executive officer under Articles 1 through 5 of this Chapter.

(d) A petition shall contain:

(1) the name, address, and telephone number of the petitioner;

(2) the specific action or failure to act which the state board is requested to reconsider and a copy of any document issuing or denying certification that is referred to in the petition;

(3) the date on which the certification action or failure to act occurred;

(4) a full and complete statement of reasons why the action or failure to act was inappropriate or improper;

(5) the manner in which the petitioner is aggrieved;

(6) the specific action by the state board which the petitioner requests;

(7) a list of persons, if any, other than the petitioner and applicant, if not the petitioner, known to have an interest in the subject matter of the petition;

(8) a statement that the petition has been sent to the appropriate regional board or executive officer and to the applicant, if not the petitioner; and

(9) a copy of a request to the executive director or appropriate executive officer for preparation of the state board or regional board staff record, if applicable and available, which will include a tape recording or transcript of any pertinent regional board or staff hearing.

(10) A summary of the manner in which and to what extent the petitioner participated in any process (e.g., public hearing testimony, discussion with agency personnel, correspondence), if available, leading to the action or failure to act in question. If a process for participation was available, but the applicant did not participate, the petition shall include an explanation for the petitioner's failure to participate.

NOTE: AUTHORITY CITED: SECTIONS 1058 AND 13160.1, WATER CODE.

REFERENCE: 26 USC SECTION 169, 40 CFR SECTION 20; 15 USC SECTION 636, 40 CFR SECTION 21; 33 USC SECTION 1341; SECTIONS 7, 183, 186, 1059, 13160 AND 13160.1, WATER CODE; AND SECTIONS 44533 AND 44539, HEALTH AND SAFETY CODE.

HISTORY

1. Amendment of section and Note filed 5-25-2000; operative 6-24-2000 (Register 2000, No. 21).

2. Amendment of subsections (a)-(b) and amendment of Note filed 12-23-2003 as an emergency; operative 1-1-2004 (Register 2003, No. 52). Pursuant to Water Code section 13160.1 this rulemaking action remains in effect until revised by the State Water Resources Control Board.

§ 3867.1. Response to Complete Petitions.

After receipt of a petition that complies with Section 3867 of this Chapter, the state board or executive director, if acting as the state board's designee, shall give written notification to the petitioner, applicant (if not the petitioner), appropriate executive officer(s), appropriate regional board(s), and other interested persons that they shall have 20 days from the date of mailing such notification to file a response to the petition with the state board. Respondents to petitions shall also send copies of their responses to the petitioner, the applicant (if not the petitioner), and the appropriate executive officer(s). The executive director or executive officer shall file the record specified in Subsection 3867(d)(9) of this Chapter with the state board within this 20-day period. The time for filing a response may be extended by the state board or executive director, if acting as the state board's designee.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: 26 USC SECTION 169, 40 CFR SECTION 20; 15 USC SECTION 636, 40 CFR SECTION 21; 33 USC SECTION 1341; SECTIONS 7, 183, 186, 1059 AND 13160, WATER CODE; AND SECTIONS 44533 AND 44539, HEALTH AND SAFETY CODE.

HISTORY

1. New section filed 5-25-2000; operative 6-24-2000 (Register 2000, No. 21).

§ 3868. Defective Petitions.

After receipt of a petition that does not comply with Section 3867 of this Chapter, the petitioner will be notified in what respect the petition is defective and the time within which an amended petition may be filed. If a properly amended petition is not received by the state board within the time allowed, the petition shall be dismissed unless good cause is shown for an extension of time.

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: 26 USC SECTION 169, 40 CFR SECTION 20; 15 USC SECTION 636, 40 CFR SECTION 21; 33 USC SECTION 1341; SECTIONS 7, 183, 186, 1059 AND 13160, WATER CODE; AND SECTIONS 44533 AND 44539, HEALTH AND SAFETY CODE.

HISTORY

1. Amendment of section and Note filed 5-25-2000; operative 6-24-2000 (Register 2000, No. 21).

§ 3869. Action on a Petition.

(a) Following examination of the petition and any necessary portion of the record, the state board or executive director, when acting as the state board's designee, may:

(1) refuse to reconsider the action or failure to act of the executive director (state board only), regional board, or executive officer if the petition fails to raise substantial issues that are appropriate for reconsideration;

(2) deny the petition upon a finding that the original action or failure to act was appropriate and proper;

(3) set aside or modify, if possible, the previous action or take new appropriate action; or

(4) direct the executive director (state board only), executive officer, or regional board to take appropriate action.

(b) The state board or executive director, if acting as the state board's designee, may augment the record by:

(1) requesting additional written material; or

(2) holding a public hearing, pursuant to the State Board's hearing regulations (Title 23, California Code of Regulations, Sections 648-648.8).

Whenever additional written material is to be added to the record, the state board or executive director, if acting as the state board's designee, shall provide written notification to all interested persons concerning the nature and kind of the additional written material, that the additional material may be viewed and copied at the offices of the state board, and that they shall have 30 days from the date of mailing such notification to file written comments concerning the additional information with the state board.

(c) The state board or executive director, when acting as the state board's designee, may hold action on a petition in abeyance if agreed upon in writing by the petitioner and the applicant (if not the petitioner).

(d) An aggrieved person may petition the state board or executive director, when acting as the state board's designee, for a stay of the effect of an action under this Chapter by a regional board, executive officer, or the executive director (state board only). Petitions for a stay are subject to the following requirements:

(1) A stay shall be granted only if the petitioner alleges facts and produces proof of:

(A) substantial harm to the petitioner or to the public interest if the stay is not granted;

(B) lack of substantial harm to other interested persons and the public interest if a stay is granted, or the harm which would result from the stay being granted substantially outweighed by the harm which would occur if no stay is granted; and

(C) substantial questions of fact or law regarding the disputed action.

(2) A petition for a stay shall be supported by an affidavit from a person or persons having knowledge of the facts alleged. Upon a documented showing by the petitioner that it complies with the prerequisites for a stay, the state board or the executive director (when not the originator of the action in question) may

hold a hearing. A request for a stay may be issued or denied without a hearing. If a hearing is held, notice shall be given in such manner and to such persons, in addition to the petitioner, as the board or executive director (when not the originator of the action in question) deems appropriate.

(3) Nothing in Subsection 3869(d)(1) of this Chapter shall preclude the state board or executive director, when acting as the state board's designee, from issuing a stay of the effect of an action under this Chapter by a regional board, an executive officer, or the executive director (state board only), upon their own motion. The requirement for an affidavit may be waived by the state board or the executive director (when not the originator of the action in question).

NOTE: AUTHORITY CITED: SECTION 1058, WATER CODE.

REFERENCE: 26 USC SECTION 169, 40 CFR SECTION 20; 15 USC SECTION 636, 40 CFR SECTION 21; 33 USC SECTION 1341; SECTIONS 7, 183, 186 AND 1059, WATER CODE; AND SECTIONS 44533 AND 44539, HEALTH AND SAFETY CODE.

HISTORY

1. Amendment of section heading, repealer and new section, and amendment of Note filed 5-25-2000; operative 6-24-2000 (Register 2000, No. 21).

* * *

DIVISION 5. PREVENTION OF WASTE, UNREASONABLE USE OR DIVERSION OF WATER (STATE WATER RESOURCES CONTROL BOARD AND DEPARTMENT OF WATER RESOURCES)

CHAPTER 1. PROCEDURES

§ 4000. Definitions.

As used in this chapter, the terms listed below shall have the meanings noted:

(a) "board" shall mean the State Water Resources Control Board.

(b) "department" shall mean the Department of Water Resources.

(c) "misuse of water" or "misuse" shall mean any waste, unreasonable use, unreasonable method of use, unreasonable method of diversion of water, or any public nuisance as defined in Water Code Section 305.

NOTE: AUTHORITY CITED: SECTIONS 124, 185, 275, AND 1058, WATER CODE.

REFERENCE: CALIFORNIA CONSTITUTION, ARTICLE X, SECTION 2 AND SECTIONS 100, 275, AND 301, WATER CODE.

HISTORY

1. New Chapter 5 (Subchapter 1, Sections 4000-4007) filed 7-6-79 by Department of Water Resources and State Water Resources Control Board; effective thirtieth day thereafter (Register 79, No. 27).

§ 4001. Investigations.

(a) Upon request of the board, or upon its own motion, or upon good cause shown by any interested person, and in furtherance of Water Code Sections 100, 101, 275, 304, and 305, the department shall investigate any misuse of water.

(b) Where it appears that the department could be a party to a misuse of water, or has a direct interest in the misuse by virtue of being a permit holder, or having a contractual or other interest in the specific case, which might conflict materially with its responsibilities under this chapter, the department shall suspend its investigation and notify the board. Upon any such notification, or upon its own motion or good cause shown by any interested person, the board shall determine whether the department has an interest in the misuse which would impair its ability to carry out its responsibilities under this chapter. If the board determines that such an interest exists, it shall request the department to suspend its investigation, or to continue the investigation under the board's direct supervision. If the department suspends its investigation, the board may continue the investigation.

NOTE: AUTHORITY CITED: SECTIONS 124, 185, 275, AND 1058, WATER CODE.

REFERENCE: SECTIONS 183, 225-236, 275, AND 1051, WATER CODE.

§ 4002. Notifications and Responses.

(a) If preliminary investigation indicates that misuse of water has occurred or is occurring, the department shall notify the appropriate local governmental entity or water supplier with authority to regulate water use. The notification shall request the entity or supplier to take action within a reasonable time set by the department to terminate such misuse of water, or demonstrate to the satisfaction of the department that such misuse has not occurred or is not occurring.

(b) In the event the local governmental entity or water supplier fails or is unable to perform the actions set forth in subsection (a) above, within a reasonable time set by the department, the department shall notify the person or persons who are a party to the misuse of water or public nuisance, and may thereafter allow a reasonable period of time in which to terminate such misuse or demonstrate to the satisfaction of the department that such misuse or public nuisance has not occurred or is not occurring.

(c) Where such preliminary investigation is conducted by the board, the board shall follow the procedures in subsections (a) and (b) above.

(d) If the misuse of water is corrected to the department's satisfaction, or if the department finds that a misuse does not exist, it shall notify the board. The board shall not thereafter conduct a hearing pursuant to Section 4003 unless it has information to believe the misuse has not been corrected, or that a misuse exists, or may occur.

NOTE: AUTHORITY CITED: SECTIONS 124, 185, 275, AND 1058, WATER CODE.
REFERENCE: CALIFORNIA CONSTITUTION, ARTICLE X, SECTION 2 AND SECTIONS 100, 183, 225-236, 275, 305, AND 1051, WATER CODE.

§ 4003. Further Investigations.

The board may, prior to hearing, require the department to conduct any further investigations which it finds to be necessary, or to set forth further reasons why the department believes that a misuse exists.

NOTE: AUTHORITY CITED: SECTIONS 124, 185, 275, AND 1058, WATER CODE.
REFERENCE: SECTIONS 183, 225-236, 275, AND 1051, WATER CODE.

§ 4004. Hearing Before the Board.

At the end of the time set by the department to terminate the misuse of water or to demonstrate that misuse has not occurred or is not occurring, upon reference by the department, or upon good cause shown by any interested persons, or upon its own motion, the board may hold a hearing to determine if such nuisance, waste, unreasonable use, method of use, or method of diversion has occurred or continues to occur.

(a) Where the department has referred a misuse of water to the board for hearing, the department shall present evidence of misuse of water at such hearing.

(b) After hearing, the board may issue its order requiring prevention or termination of the misuse.

NOTE: AUTHORITY CITED: SECTIONS 124, 185, 275, AND 1058, WATER CODE.
REFERENCE: CALIFORNIA CONSTITUTION, ARTICLE X, SECTION 2 AND SECTIONS 100, 183, 184, AND 275, WATER CODE.

§ 4005. Noncompliance with Order: Revocation of Entitlement.

If a respondent refuses or neglects to comply with any order issued pursuant to Section 4004 within such reasonable period of time as allowed by the board, or such extension thereof as may for good cause be allowed by the board, and if such order includes a finding that a misuse has occurred or continues to occur in connection with exercise of a right evidenced by a permit or license issued by the board, a revocation action may be commenced by the board pursuant to Article 5 of Chapter 6 in the case of a permit or pursuant to Article 7 of Chapter 9 in the case of a license, of Part 2 of Division 2 f the Water Code.

NOTE: AUTHORITY CITED: SECTIONS 124, 185, 275, AND 1058, WATER CODE.
REFERENCE: CALIFORNIA CONSTITUTION, ARTICLE X, SECTION 2 AND SECTIONS 100, 275, 1253, 1410, AND 1675, WATER CODE.

§ 4006. Noncompliance with Order: Enforcement by Attorney General.

If a respondent fails or refuses to comply with any order issued pursuant to Section 4004 within such reasonable period of time as allowed by the board, or

such extension thereof as may for good cause be allowed by the board, and if such order includes a finding that the misuse has occurred or continues to occur in connection with acts by a person not subject to a permit or license issued by the board, the board may refer the matter to the Attorney General for appropriate legal action.

NOTE: AUTHORITY CITED: SECTIONS 124, 185, 275, AND 1058, WATER CODE.

REFERENCE: CALIFORNIA CONSTITUTION, ARTICLE X, SECTION 2 AND SECTIONS 100 AND 275, WATER CODE.

HISTORY

1. Amendment filed 1-16-80 as procedural and organizational; effective thirtieth day thereafter (Register 80, No. 3).

§ 4007. Independent Authority.

Nothing contained in this chapter shall be construed as a limitation or constraint on the authority of the board or the department to prevent independently the misuse of water.

NOTE: AUTHORITY CITED: SECTIONS 124, 185, 275, AND 1058, WATER CODE.

REFERENCE: SECTION 275, WATER CODE.

CALIFORNIA
Water Boards

STATE WATER RESOURCES CONTROL BOARD
REGIONAL WATER QUALITY CONTROL BOARDS

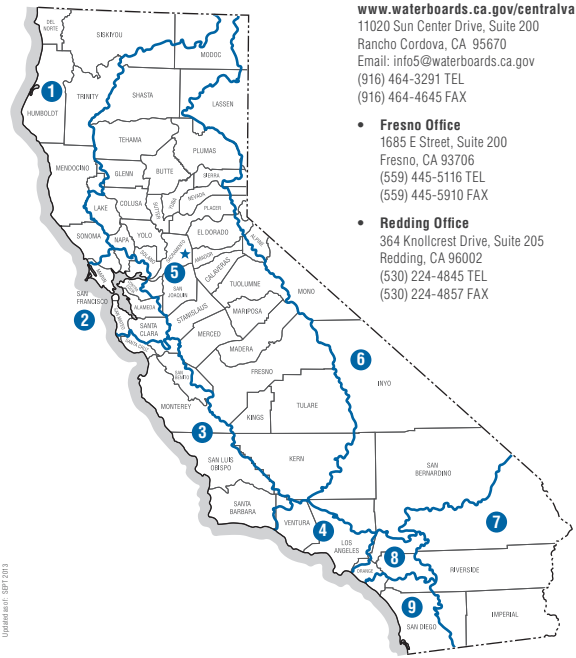
1001 I Street, Sacramento, CA 95814 • P.O. Box 100, Sacramento, CA 95812-0100 • Email: info@waterboards.ca.gov • www.waterboards.ca.gov

OFFICE OF PUBLIC AFFAIRS (916) 341-5254	OFFICE OF LEGISLATIVE AFFAIRS (916) 341-5251	OFFICE OF THE OMBUDSMAN (916) 341-5254	WATER QUALITY INFORMATION (916) 341-5455	WATER RIGHTS INFORMATION (916) 341-5300	FINANCIAL ASSISTANCE INFORMATION (916) 341-5700

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARDS

NORTH COAST (1)
www.waterboards.ca.gov/northcoast
5550 Skylane Blvd., Suite A
Santa Rosa, CA 95403
Email: info1@waterboards.ca.gov
(707) 576-2220 TEL
(707) 523-0135 FAX

SAN FRANCISCO BAY (2)
www.waterboards.ca.gov/sanfranciscobay
1515 Clay Street, Suite 1400
Oakland, CA 94612
Email: info2@waterboards.ca.gov
(510) 622-2300 TEL
(510) 622-2460 FAX



CENTRAL COAST (3)
www.waterboards.ca.gov/centralcoast
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401
Email: info3@waterboards.ca.gov
(805) 549-3147 TEL
(805) 543-0397 FAX

LOS ANGELES (4)
www.waterboards.ca.gov/losangeles
320 W. 4th Street, Suite 200
Los Angeles, CA 90013
Email: info4@waterboards.ca.gov
(213) 576-6600 TEL
(213) 576-6640 FAX

CENTRAL VALLEY (5)
www.waterboards.ca.gov/centralvalley
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670
Email: info5@waterboards.ca.gov
(916) 464-3291 TEL
(916) 464-4645 FAX

- **Fresno Office**
  1685 E Street, Suite 200
  Fresno, CA 93706
  (559) 445-5116 TEL
  (559) 445-5910 FAX
- **Redding Office**
  364 Knollcrest Drive, Suite 205
  Redding, CA 96002
  (530) 224-4845 TEL
  (530) 224-4857 FAX

LAHONTAN (6)
www.waterboards.ca.gov/lahontan
2501 Lake Tahoe Blvd.
South Lake Tahoe, CA 96150
Email: info6@waterboards.ca.gov
(530) 542-5400 TEL
(530) 544-2271 FAX

- **Victorville Office**
  14440 Civic Drive, Suite 200
  Victorville, CA 92392
  (760) 241-6583 TEL
  (760) 241-7308 FAX

COLORADO RIVER BASIN (7)
www.waterboards.ca.gov/coloradoriver
73-720 Fred Waring Dr., Suite 100
Palm Desert, CA 92260
Email: info7@waterboards.ca.gov
(760) 346-7491 TEL
(760) 341-6820 FAX

SANTA ANA (8)
www.waterboards.ca.gov/santaana
California Tower
3737 Main Street, Suite 500
Riverside, CA 92501-3339
Email: info8@waterboards.ca.gov
(951) 782-4130 TEL
(951) 781-6288 FAX

SAN DIEGO (9)
www.waterboards.ca.gov/sandiego
2375 Northside Drive, Suite 100
San Diego, CA 92108
Email: info9@waterboards.ca.gov
(619) 516-1990 TEL
(619) 516-1994 FAX

★ **State Water Resources Control Board (Headquarters)**

STATE OF CALIFORNIA
Edmund G. Brown Jr., *Governor*

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
Matthew Rodriquez, *Secretary*

STATE WATER RESOURCES CONTROL BOARD
Felicia Marcus, *Board Chair*

Updated as of: SEPT 2013