

**State of California
Office of Administrative Law**

In re:
Department of Water Resources

Regulatory Action:

Title 23, California Code of Regulations

Adopt sections:

Amend sections: 315, 316

Repeal sections:

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6**

OAL Matter Number: 2018-0914-01

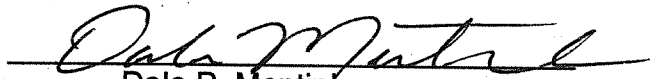
OAL Matter Type: Emergency Readopt (EE)

In this emergency readoption of amendments to regulations, the Department of Water Resources (Department) readopts the method for determining the fee schedule to cover the Department's reasonable budgetary costs to carry out the supervision of dam safety for the 1,247 jurisdictional dams in California pursuant to Senate Bill 92 (Stats. 2017, ch. 26) which enhanced the Dam Safety Program following the February 2017 Oroville emergency.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 9/25/2018 and will expire on 12/25/2018. The Certificate of Compliance for this action is due no later than 12/24/2018.

Date: September 20, 2018


Dale P. Mentink
Senior Attorney

For: Debra M. Cornez
Director

Original: Karla Nemeth, Director
Copy: Marcelino Alcantar

NOTICE PUBLICATION/REGULATIONS SUBMISSION

EMERGENCY

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

| | | | |
|------------------|---------------------------------|--------------------------|---|
| OAL FILE NUMBERS | NOTICE FILE NUMBER Z- | REGULATORY ACTION NUMBER | EMERGENCY NUMBER 2018-0914-01EE |
|------------------|---------------------------------|--------------------------|---|

For use by Office of Administrative Law (OAL) only

| | |
|--------|-------------|
| NOTICE | REGULATIONS |
|--------|-------------|

 AGENCY WITH RULEMAKING AUTHORITY
 Department of Water Resources

AGENCY FILE NUMBER (if any)

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

 SEP 20 2018
 1:35 PM
A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

| | | | | |
|---|--|---------------------------|------------------------|-------------------------------|
| 1. SUBJECT OF NOTICE | | TITLE(S) | FIRST SECTION AFFECTED | 2. REQUESTED PUBLICATION DATE |
| 3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other | | 4. AGENCY CONTACT PERSON | TELEPHONE NUMBER | FAX NUMBER (Optional) |
| OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn | | ACTION ON PROPOSED NOTICE | | NOTICE REGISTER NUMBER |
| | | | | PUBLICATION DATE |

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

| | |
|--|--|
| 1a. SUBJECT OF REGULATION(S) Annual Fees - Dam Safety Program | 1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2018-0316-01 E |
|--|--|

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

| | |
|--|------------------|
| SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.) | ADOPT |
| | AMEND 315,316 |
| | REPEAL |
| TITLE(S) Title 23. Waters | |

3. TYPE OF FILING

| | | | |
|---|---|--|---|
| <input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) | <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. | <input checked="" type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) | <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) |
| <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §511349.3, 11349.4) | <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) | <input type="checkbox"/> File & Print | <input type="checkbox"/> Print Only |
| <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) | | <input type="checkbox"/> Other (Specify) _____ | |

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)**5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)**

| | | | |
|---|--|--|---|
| <input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) | <input type="checkbox"/> Effective on filing with Secretary of State | <input type="checkbox"/> \$100 Changes Without Regulatory Effect | <input checked="" type="checkbox"/> Effective other (Specify) 09/26/2018 9/25/18 |
|---|--|--|---|

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

| | | |
|--|--|---|
| <input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) | <input type="checkbox"/> Fair Political Practices Commission | <input type="checkbox"/> State Fire Marshal |
| <input type="checkbox"/> Other (Specify) _____ | | |

| | | | |
|---|----------------------------------|-----------------------|--|
| 7. CONTACT PERSON Marcelino Alcantar | TELEPHONE NUMBER 916-227-4640 | FAX NUMBER (Optional) | E-MAIL ADDRESS (Optional) Marcelino.Alcantar@water.ca.gov |
|---|----------------------------------|-----------------------|--|

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

| | |
|---|----------------------|
| SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Karla Nemeth</i> | DATE Sept 5, 2018 |
| TYPED NAME AND TITLE OF SIGNATORY Karla Nemeth, Director | |

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

SEP 20 2018

Office of Administrative Law

Article 3. Annual Fee

315. Annual Fee.

- (a) Determination of Amount. The department shall determine the amount of the annual fee ~~as of June 30 each year and shall inform each owner of that amount on or before October 31 of each year.~~ in accordance with section 6307 of the Water Code to recover its costs expended each fiscal year for the statewide regulation of dam safety pursuant to Water Code, Division 3, Part 1. The annual fee shall cover the fiscal year period July 1 through June 30 and be calculated in accordance with this section. Each owner shall be informed of the amount of the fee by April 30 of each year for fees that will be effective on July 1.

- (1) Annual Fee Revenue (AFR) is the amount of funds that shall be collected on a fiscal-year basis to recover the costs of the Dam Safety Program. Annual Fee Revenue is equal to the Required Revenue (RR) less the Filing Fee Revenue (FFR), adjusted for True-up, as shown in the following formula:

$$\text{AFR} = \text{RR} - \text{FFR} + \text{True-up}$$

- (A) Required Revenue (RR) equals the total amount of funds required to recover the entire costs of implementation of the Dam Safety Program each fiscal year including repayment of budgetary loans and a prudent reserve. RR is based on the number of personnel positions, including salaries and benefits; operating expenses; contractual obligations; overhead costs; and all other direct and indirect costs, as approved in the California Budget Act for that fiscal year.

- (B) Filing Fee Revenue (FFR) equals the amount of funds earned from application filing fees.

- (C) True-up refers to the excess or shortfall in the actual revenue collected or used in the prior fiscal year and shall be carried over to the next fiscal year's calculation of the total revenue requirement.

- (D) Dam Safety Program refers to the department's statewide regulation of dam safety implemented pursuant to Water Code, Division 3, Part 1.

- (2) Annual Schedule of Fees. All dams shall be assessed an annual fee based on the following formula:

$$\text{Annual Fee} = [\text{Administrative Fee} + (\text{Height of Dam}) \times (\text{Height of Dam Rate})]$$

- (A) Administrative Fee refers to a flat fee per dam that is calculated at five percent of the AFR divided by the total number of jurisdictional dams and rounded to the nearest whole dollar.

- (B) Height of dam shall have the same meaning as specified in section 6307(c) of the Water Code. In accordance with section 6008 of the Water Code, water storage elevation means that elevation of water surface which could be obtained by the existing

dam or reservoir, as previously operated, were there no outflow and were the reservoir full of water.

(C) Height of Dam Rate refers to the rate calculated based on ninety-five percent of the AFR divided by the total linear feet of dam height for operable dams and rounded to the nearest whole dollar.

(3) Rate Structures. The Annual Fee incorporates three rate structure categories. These categories include:

(A) General rate, which applies to all dams that do not qualify for a reduced or limited rate under subsection (B) or (C), below.

(B) Reduced rate, which applies to dams that meet the definitions in Water Code sections 6307(e) or 6307(f), shall be limited to twenty percent of the general rate structure.

(C) Limited rate, which applies to inoperative dams defined in section 316 or dams that are described in Water Code section 6307 (d). The limited rate shall only include the Administrative Fee described in subsection (a)(2)(A).

(b) Penalty for Delinquent Payment of Annual Fee. An owner who fails to pay any part of any annual fee on or before December 31, as required by Section 6307 of the Water Code, shall be penalized in accordance with section 6428 of the Water Code. Annual fees imposed pursuant to section 6307 are due July 1 and delinquencies are subject to section 6428(b). In addition, in accordance with section 6429 of the Water Code, the department may impose reservoir restrictions or levy property liens on dam owners for delinquent payment of annual fees.

(c) Annual fees shall be assessed for new or enlarged dams that are completed or in operation, as determined by the department, during a fiscal year in accordance with the following:

(1) The annual fee for a new or enlarged dam completed or in operation from on or after July 1 through December 31 of a given fiscal year shall be the full fiscal-year rate described in subsection (a)(3)

(2) The annual fee for new or enlarged dams that are completed or are in operation after December 31 shall be prorated based upon the date in the fiscal year the new or enlarged dam became complete or in operation, as follows: New or enlarged dams that are completed or are in operation from January 1 through March 31 shall be assessed half the annual fee pursuant to the rate specified in subsection (a)(3) for that given fiscal year. No annual fee shall be assessed for new or enlarged dams that are completed or in operation from April 1 through June 30. Thereafter, the annual fee shall be the full fiscal year rate pursuant to subsection (a)(3).

(d) If unforeseen expenses, such as significant increases in operating expenses or new dam safety requirements, arise during the fiscal year, the department may initiate a supplemental billing during the same fiscal period in order to recover the additional costs.

Authority: Sections 6078 and 6307, Water Code.

Reference: Sections ~~161~~ Water Code, 6002, 6002.5, 6005, 6007, 6008, 6009, 6307, 6309, 6428, 6429, Water Code

316. Inoperative Dams.

A dam will not be considered to be ~~substantially completed or in operation~~ operative for annual fee purposes, where the department determined that it has been rendered permanently inoperative ~~on other than a temporary basis~~. In making its determination, the department shall consider the following circumstances, among others, with respect to the dam:

- (a) Alteration of the outlet facilities approved by the department to remove the gate or valve controls, or other means to assure maximum possible uncontrolled water release through the outlet works.
- (b) Absence of water impounding capability under reasonably foreseeable conditions, taking into account the size of the drainage area.
- (c) Absence of benefit from the dam and reservoir to the owner or others.

The department may determine that a dam is no longer inoperative when investigation reveals that conditions which rendered the dam permanently inoperative ~~on other than a temporary basis~~ have changed. In this event, the dam will be considered ~~substantially completed or in operation~~ on the date such determination is made, ~~and the annual fee shall be charged on a pro rata basis.~~

Authority: Sections 6078 and 6307, Water Code.

Reference: Sections 6002, 6002.5, 6005, 6006, 6007, 6307, 6309, Water Code