

[Title 14 Department of Fish and Game]

STATE OF CALIFORNIA  
DEPARTMENT OF FISH AND GAME  
INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION  
(Pre-publication of Notice Statement)

Amend Section 753.5  
Title 14, California Code of Regulations  
Re: Collection of Filing Fees

December 9, 2008

The following initial statement of reasons contains the requisite information identified in Government Code section 11346.2(b) subsections (1) through (5). The numbered headings below address each requirement of the corresponding subsection of Government Code section 11346.2(b).

**1) SPECIFIC PURPOSE**

Fish and Game Code section 711.4 requires the Department of Fish and Game (Department) to impose and collect a filing fee on projects subject to the California Environmental Quality Act (CEQA). The filing fees are collected to defray the cost of managing and protecting California's fish and wildlife resources. On September 29, 2006, Senate Bill 1535 was signed into law increasing filing fees collected by the Department, and requiring the Department to adjust filing fees annually pursuant to Fish and Game Code section 711.4. Senate Bill 1535 eliminated the fee exemption for projects with a de minimis effect on fish and wildlife as determined by the lead agency. Under the new law, a filing fee is paid unless a project will have no effect on fish and wildlife. These changes became effective on January 1, 2007. However, existing regulations (title 14, section 753.5 of the California Code of Regulations) still contain the de minimis exemption and not the current no effect exemption. Since January 1, 2007, all no effect determinations have been made by the Department. The current language of section 753.5 does not conform with Fish and Game Code section 711.4 or current Department practice.

The objective of the proposed amendments are to update and clarify the regulations to conform with existing law (Fish and Game Code section 711.4), reflect current Department practice, and clarify the procedures for no effect determinations. Specific purposes of the proposed amendments to the regulations are as follows:

A) The proposed amendments replace the de minimis exemption with the no effect exemption, add the requirement to adjust filing fees annually, add language regarding the collection of filing fees for projects subject to a certified regulatory program or state

lead agency, and clarify the parties responsible for the payment of fees. The purpose of these changes is to remove obsolete regulatory language and make the regulations conform with Fish and Game Code section 711.4. These changes are reasonably necessary to carry out the program and make Department regulatory language conform with the statutory language from Fish and Game Code.

B) The proposed amendments state that the Department determines if a project will have no effect on fish and wildlife. Fish and Game Code section 711.4(c)(2)(A) states that no fee shall be paid if the project will have no effect on fish and wildlife, but does not identify what entity makes this determination. The Department has been making no effect determinations since Senate Bill 1535 became effective on January 1, 2007. The Department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of those species pursuant to Fish and Game Code section 1802. The Department, with the requisite biological expertise, is the agency best equipped to determine if a project would have no effect on fish and wildlife. The purpose of this change is to make the regulations conform with current Department practice. This change is reasonably necessary to carry out the program and make the regulatory language conform with current Department practice.

C) There is currently no guidance provided to lead agencies and the public regarding what projects may be considered by the Department to have no effect on fish and wildlife. The proposed amendments provide this guidance and list factors that could lead to a no effect determination. The purpose of this change is to provide a greater understanding to applicants and lead agencies of what constitutes no effect on fish and wildlife. This amendment is reasonably necessary to carry out the program, and give guidance to lead agencies and project proponents.

D) Current regulatory language only provides that a private entity or special district shall be considered to be the applicant and required to remit the fee when a local land use authority grants a license, permit, or entitlement. The proposed amendments would clarify that applicants are required to remit the fee when a state land use authority grants a license, permit, or entitlement to a private entity or special district as well. The purpose of this change is to ensure that both state and local lead agencies are not held responsible for the payment of the filing fee when granting a license, permit, or entitlement to a private entity or special district. This change is reasonably necessary to allow equal treatment of state and local lead agencies when determining which entity is considered the project applicant and required to remit the fee.

E) The proposed amendments include a list of separate environmental documents pursuant to Fish and Game Code section 711.4(g). The purpose of this change is to clarify the phrase “separate environmental documents” in Fish and Game Code section 711.4(g), and clarify when payment of more than one filing fee is required. This change is reasonably necessary to avoid confusion when determining what constitutes separate

environmental documents in Fish and Game Code section 711.4(g).

F) The proposed amendments clarify the existing requirement that environmental filing fee cash receipts generated by counties be approved by the Department prior to use, and provide the procedure for counties to obtain that approval. The purpose of this change is to ensure that counties record sufficient project information when collecting environmental filing fees pursuant to Fish and Game Code sections 711.4(d) and (e). This change is reasonably necessary to carry out the program, and give guidance to counties collecting filing fees.

G) The proposed amendments also include minor editorial changes to correct errors, improve clarity, reduce redundancy, and replace outdated terminology. The amendments update references to the California Code of Regulations and the Public Resources Code. The proposed amendments will not mandate the use of specific technologies or equipment.

## **2) IDENTIFICATION OF STUDIES**

No technical, theoretical, or empirical studies, reports or other similar documents were relied upon in proposing the amendments to title 14, section 753.5 of the California Code of Regulations.

## **3) DESCRIPTION OF ALTERNATIVES**

Existing regulations do not conform with section 711.4 of the Fish and Game Code and do not reflect current Department practice. The one alternative considered by the Department is no regulatory action. If no regulatory action were to occur there would continue to be no guidance available regarding which projects will have no effect on fish and wildlife, the regulations would continue to be incorrect and obsolete, and the regulations would not conform with section 711.4 of the Fish and Game Code and current Department practice. Therefore, the Department has determined that no regulatory action is not a reasonable alternative. The Department finds that aside from minor editorial alterations, there are no reasonable alternatives to this regulatory action. Because the proposed amendments are not anticipated to have any adverse impact to small businesses, there are no reasonable alternatives to this regulatory action that would lessen an impact to small businesses. Pursuant to Government Code section 11346.2(b)(3)(C) the Department is not required to artificially construct alternatives, describe unreasonable alternatives, or justify why it has not described alternatives. In view of information currently possessed, no alternative would be more effective in carrying out the purposes of the proposed amendments or would be as effective and less burdensome to the affected private persons than the proposed amendments.

## **4) SUPPORTING EVIDENCE**

Adoption of the proposed amendments will make section 753.5 of the title 14 regulations conform with Fish and Game Code 711.4 and current Department practice. The collection of CEQA filing fees and the adjustment of fees are governed by Fish and Game Code sections 711.4 and 713, and the proposed amendments do not alter the amount or current collection procedure of those fees. Annual adjustments in environmental filing fees are based on changes in the Implicit Price Deflator for State and Local Government Purchases of Goods and Services, as published by the U.S. Department of Commerce. The proposed amendments would update title 14 regulations, and would not result in any additional costs or savings to a representative private person or business beyond what is currently mandated in Fish and Game Code section 711.4. The proposed amendments give guidance on how the Department will determine whether a project will have no effect on fish and wildlife, and list factors that could lead to a no effect determination. These conditions are included to clarify what the Department considers in making the determination that a project has no effect on fish and wildlife. It is not expected that adoption of the proposed amendments and articulation of these procedures and criteria will lead to a change in the number or type of projects the Department determines to have no effect on fish and wildlife. Therefore, the Department finds that adoption of the proposed amendments will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

## **5) DUPLICATION OF FEDERAL REGULATIONS**

There are no federal regulations that address the same issues as the proposed amendments, therefore adoption of the proposed amendments will not duplicate or conflict with federal regulations contained in the Code of Federal Regulations addressing the same issues.

Dated:

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Donald Koch, Director  
Department of Fish and Game