

[Title 14 Department of Fish and Game]

STATE OF CALIFORNIA  
NOTICE BY THE DEPARTMENT OF FISH AND GAME  
TO CONSIDER THE ADOPTION OF  
AMENDMENTS TO EXISTING REGULATIONS

December 9, 2008

NOTICE IS HEREBY GIVEN that the Department of Fish and Game (Department) proposes to amend existing regulations pertaining to the collection of California Environmental Quality Act (CEQA) filing fees and the determination of no effect on fish and wildlife under Fish and Game Code section 711.4.

**PROPOSED REGULATORY ACTION**

The Department proposes to amend the following section of title 14, division 1, subdivision 3, of the California Code of Regulations:

Chapter 4, Article 1, Section 753.5. Collection of Filing Fees.

The following public notice contains the requisite information identified in Government Code section 11346.5(a) subsections (1) through (20). The numbered headings below address each requirement of the corresponding subsection of Government Code section 11346.5(a).

**1) PUBLIC HEARING**

The Department will conduct one public hearing to receive comments, objections, and recommendations regarding this proposed regulatory action. The hearing will be held:

Monday, February 2, 2009, 10:00 a.m. to 12:00 p.m.  
Resources Building Auditorium  
1416 9th Street  
Sacramento, CA 95814

**2) REFERENCE TO AUTHORITY**

This regulatory amendment is proposed under the authority of the Department and Fish and Game Code sections 711.4 and 702. This regulation implements, interprets, or makes specific Fish and Game Code section 711.4.

**3) INFORMATIVE DIGEST/PLAIN ENGLISH POLICY STATEMENT OVERVIEW**

A) Existing law requires the Department to impose and collect a filing fee on projects subject to 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 713. Senate Bill 1535 eliminates the former fee exemption for projects with a de minimis effect on fish and wildlife as determined by the lead agency. The new law requires that a project have no effect on fish and wildlife to be eligible for the fee exemption. These changes became effective on January 1, 2007. Existing regulations within title 14, section 753.5 of the California Code of Regulations still contain the de minimis exemption and not the current no effect exemption stated in Fish and Game Code section 711.4(c)(2)(A). 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 proposed amendments to section 753.5 would make the regulations conform with Fish and Game Code section 711.4 and current Department practice. The proposed amendments would clarify that the Department determines if a project will have no effect on fish and wildlife. The proposed amendments would also clarify the procedures for no effect determinations. The proposed amendments remove obsolete regulatory language which states that de minimis determinations are made by the lead agency, and replace it with the procedure and criteria the Department currently uses to determine if a project has no effect on fish and wildlife pursuant to Fish and Game Code section 711.4(c)(2)(A). The proposed amendments gives guidance on how the Department will determine whether a project will have no effect on fish and wildlife, and lists factors that could lead to a no effect determination.

The proposed amendments include the Fish and Game Code section 711.4 requirement to adjust filing fees annually. The proposed amendments add language regarding the collection of filing fees for projects subject to a certified regulatory program and projects with a state lead agency and add language clarifying the parties responsible for the payment of fees. The proposed amendments would state that a private entity or special district shall be considered to be the applicant and be required to remit the fee when a state land use authority grants a license, permit, or entitlement to that private entity or special district. The proposed amendments clarify the situations where payment of more than one filing fee may be required due to preparation of separate environmental documents pursuant to Fish and Game Code section 711.4(g). A list of separate environmental documents is included in the amendments.

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 a procedure for counties to obtain that approval. The proposed amendments include minor editorial changes to correct errors, improve clarity, reduce

redundancy, and replace outdated terminology. References are updated to reflect recent amendments to the California Code of Regulations.

B) There is no existing comparable federal law or regulation, therefore the Department's proposed amendments do not duplicate an existing federal law or regulation.

C) The objective of the proposed amendments is to update and clarify the regulations so that they conform with existing law (Fish and Game Code section 711.4), reflect current Department practice, and clarify the procedures for no effect determinations.

#### **4) OTHER MATTERS PRESCRIBED BY STATUTE**

None.

#### **5) MANDATES ON LOCAL AGENCIES AND SCHOOL DISTRICTS**

Adoption of the proposed amendments will not impose a mandate on local agencies or school districts, and will therefore not require any state reimbursement pursuant to Part 7 (commencing with section 17500) of Division 4, Government Code.

#### **6) COSTS OR SAVINGS TO STATE OR LOCAL AGENCIES**

The proposed amendments would update title 14 regulations, and would not result in any additional costs or savings to any state agency, any local agency or school district, any cost or savings in federal funding to the state, or any nondiscretionary cost or savings imposed upon local agencies.

#### **7-8) IMPACTS ON BUSINESS**

Adoption of the proposed amendments is not expected to result in a change in business practice. The number of projects requiring the payment of environmental filing fees will be unaffected by the proposed amendments to title 14, section 753.5. Therefore, the Department has determined that 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. In making this declaration, the Department has provided in the record all facts, evidence, documents, testimony and other evidence upon which the Department relied upon.

The Department has determined that the proposed amendments will not affect small business. The proposed amendments will not affect small business because the number of projects requiring the payment of environmental filing fees will be unaffected by the proposed amendments.

## **9) COST IMPACT ON PRIVATE PERSONS AND BUSINESSES**

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

## **10) IMPACTS ON JOBS**

Adoption of the proposed amendments will not affect the creation or elimination of jobs within California, the creation of new businesses or the elimination of existing businesses within California, or the expansion of businesses currently doing business within California.

## **11) BUSINESS REPORTING**

Adoption of the proposed amendments will not require a report.

## **12) SIGNIFICANT EFFECTS ON HOUSING COSTS**

Adoption of the proposed amendments will not have any effect on housing costs.

## **13) CONSIDERATION OF ALTERNATIVES**

No reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

## **14) DEPARTMENT REPRESENTATIVE**

Inquiries concerning the proposed regulatory action may be directed to Kathleen Perry at (916) 651-1280, or Jeb Bjerke at (916) 651-3122.

## **15) WRITTEN COMMENT PERIOD**

Any interested person may submit written comments relevant to the proposed regulation amendments. Written comments must be received no later than 5:00 p.m. on February 2, 2009 in order for the Department to consider them before adopting the proposed amendment.

Please send or deliver any written comments to:

Kathleen Perry  
Department of Fish and Game  
1416 Ninth Street, Suite 1260  
Sacramento, California 95814

## **16) AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS**

The Department has prepared an Initial Statement of Reasons providing an explanation of the purpose, background, and justification for adoption of the proposed amendments to the regulations and an Economic and Fiscal Impact Statement (STD. 399). The statement and any documents upon which the Department's proposed amendments are based are available upon request from the Department's contact person Kathleen Perry at (916) 651-1280, or Jeb Bjerke at (916) 651-3122. A copy of the express terms of the proposed amendments to the regulations, as well as any other information in the Department's rulemaking file, is also available from the Department's contact person and on the Department's website at [www.dfg.ca.gov](http://www.dfg.ca.gov). A copy of the Department's final statement of reasons, once it has been prepared, will also be available from the Department's contact person and the Department's website.

## **17) REQUEST FOR A PUBLIC HEARING**

If no public hearing were scheduled, any interested person would be able to request a public hearing no later than 15 days prior to the close of the public comment period. However, the Department has scheduled a public hearing to be conducted on Monday, February 2, 2009 from 10:00 a.m. to 12:00 p.m. in the Resources Building Auditorium at 1416 9th Street Sacramento, CA 95814.

## **18) AVAILABILITY OF THE PROPOSED TEXT**

The full text of the proposed regulation amendments pursuant to Government Code section 11346.8 is available from the Department's contact person and on the Department's website as is explained in subsection 16 above. The full text of a regulation changed pursuant to Government Code section 11346.8 will be made available for at least 15 days prior to the date on which the Department amends the resulting regulation unless the change is nonsubstantial, solely grammatical in nature, or sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action.

## **19) AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

A copy of the Department's final statement of reasons, once it has been prepared, will be available from the Department's contact person and on the Department's website at [www.dfg.ca.gov](http://www.dfg.ca.gov).

## 20) INTERNET AVAILABILITY

The express terms of the proposed amendments to the regulations, as well as the other information in the Department's rulemaking file, are available on the Department's website at [www.dfg.ca.gov](http://www.dfg.ca.gov).

Dated:

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Donald Koch, Director  
Department of Fish and Game