MINUTE ITEM
This Calendar Item No. C44 was approved as Minute Item No. 44 by the California State Lands Commission by a vote of 3 to 0 at its 6-20-05 meeting.

CALENDAR ITEM
C44

A)

) Statewide

S)

W 9777.234
M. Falkner
G. Gregory
M. Meier

CONSIDERATION OF PERMANENT REGULATIONS REDUCING THE FEE USED TO FUND CALIFORNIA'S MARINE INVASIVE SPECIES CONTROL PROGRAMS

PROPOSAL
The Commission's Staff is proposing the adoption of permanent regulations that reduce the fee required to fund California's Marine Invasive Species Program to $400 for each voyage.

BACKGROUND
Under Section 71215(b)(2) of the Public Resources Code (P.R.C.), the Commission is authorized and directed to establish a fee (the Fee) to be used to fund the State's marine invasive species program. The fee is not to exceed $1000 per voyage, defined as a transit by a vessel destined for any California port from a port or place outside of California.

The Fee was established initially at $600 per voyage by emergency regulation that became effective on January 1, 2000. The Fee was reduced to $400 per voyage, effective April 30, 2000 by emergency regulation. That emergency regulation was replaced on August 29, 2000 with permanent regulations setting the fee at $400 per voyage. The Fee was further reduced to $200 per voyage, effective July 1, 2002 by emergency regulation. That emergency regulation was replaced on November 14, 2002 with permanent regulations setting the fee at $200 per voyage.

In 2003, the Governor and the Legislature reauthorized, expanded and renamed the law (Division 36. Marine Invasive Species Act, Chapter 491, Statues of 2003). As a result, programs and budgets expanded. As a result of the expanded programs and budgets, the Fee was increased emergency regulation, to $500 per voyage, effective

February 1, 2004. That emergency regulation was replaced June 3, 2004 with permanent regulations setting the fee at $500 per voyage. Annual review of the Fund status by Board of Equalization and State Land Commission staff predicts that under conservative assumptions, a continued Fee set at $500 is unnecessarily high.

Representatives from the community subject to the fee have concurred with the imposition of a flat fee for each voyage. Since January of 2000, the Commission Staff has met periodically with representatives from the regulated community in a Technical Advisory Group ("the TAG"). In 2000, the TAG took note of the fact that the budgets for the various programs through the end of 2003 have largely been established, so costs are essentially fixed. As a result, any reduction in the Fee for some would result in an increase in the Fee for others. The TAG therefore recommended a flat Fee for everyone.

In December 2004, staff from BOE and CSLC, after reviewing costs and other factors, recommended that the Fee be reduced to $400 per qualifying voyage. The TAG was asked to respond to this proposed Fee reduction in December 2004 and has agreed with staff recommendations. This regulatory action would set the fee at $400 per qualifying voyage on or before August 1, 2005.

The amount of the Fee earlier charged was based upon an analysis which entailed a number of assumptions, the primary one being that the financial needs for the program will be in accordance with the Budget Change Proposals which have been submitted to date. The other two assumptions were that the State would see about 6825 voyages each year against which the Fee could be levied and that the State would likely see a compliance rate of approximately 95%. These figures were based upon the experience of the shipping community and the Board of Equalization. Calculations were therefore based upon 6484 qualifying voyages per year. With these assumptions, the Commission and the TAG concluded that the Fee could be set at $500 per voyage.

During an annual review of the Fund status by Board of Equalization and Commission staff in December 2004, several assumptions used to set the Fee at $500 per voyage were reevaluated. Currently, the State is seeing a compliance rate of approximately 98%; and the number of qualifying voyages per year is approximately 6689 per year. Additionally, funds to operate the various agency's budgets were not released until July 1, 2004 resulting in an unexpected surplus of approximately $2,000,000.00 in the Fund on July 1, 2004. Based on the current Fee amount of $500 per voyage and the revised

assumptions, projections produce revenues that will exceed the costs of the programs mandated under the act. Utilizing the revised assumptions, the Commission and the TAG concluded that the Fee could be set at $400 per voyage, on or before August 1, 2005 to cover the remaining program costs though FY 2009/2010.

The Commission Staff considered alternatives to the proposed amendments, but found none that would be more effective in carrying out the purpose for which the action is proposed and less burdensome to those who would be affected.

STATUTORY AND OTHER REGULATIONS:

A. Public Resources Code Section 71200 through 71271

PERMIT STREAMLINING ACT DEADLINE:

N/A.

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Code Regs. 10561), the Commission Staff has determined that this activity is exempt from the requirements of the CEQA because the activity is not a "project" as defined by the CEQA and the State CEQA Guidelines.

   Authority: Public Resources Code Section 21084 and 14 Cal. Code Regs. 15300.

2. The proposed regulatory amendments do not affect small businesses as defined in Gov. Code Section 11342, sub. (h), because all affected businesses transportation and warehousing businesses having annual gross receipts of more than $1,500,000, as specified under Gov. Code Section 11342, sub. (h)(2)(I)(vii).

EXHIBITS:

A. Proposed Amendment.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF CEQA PURSUANT TO TITLE14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY PUBLIC RESOURCES CODE SECTION 21065 AND TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15378

2. FIND THAT THE AMENDMENT WILL NOT AFFECT SMALL BUSINESSES AS DEFINED IN GOVERNMENT CODE SECTION 11342(h), BECAUSE ALL AFFECTED BUSINESSES ARE TRANSPORTATION AND WAREHOUSING BUSINESSES HAVING ANNUAL GROSS RECEIPTS OF MORE THAN $1,500,000, AS SPECIFIED UNDER GOVERNMENT CODE SECTION 11342(h)(2)(I)(VII).

3. FIND THAT THE AMENDMENT WILL NOT HAVE A SIGNIFICANT IMPACT ON THE CREATION OR ELIMINATION OF JOBS OR NEW OR EXISTING BUSINESSES WITH CALIFORNIA, NOR WILL THEY HAVE AN ADVERSE ECONOMIC IMPACT ON BUSINESS, INCLUDING THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE WITH BUSINESSES IN OTHER STATES.

4. FIND THAT NO ALTERNATIVE WOULD BE MORE EFFECTIVE IN CARRYING OUT THE PURPOSE FOR WHICH THE AMENDMENT IS PROPOSED OR WOULD BE AS EFFECTIVE AND LESS BURDENSOME TO AFFECTED PRIVATE PERSONS THAN THE PROPOSED REGULATIONS.

5. ADOPT THE PROPOSED AMENDMENT, WHICH WOULD AMMEND ARTICLE 4.5, SECTION 2271, TO TITLE 2, DIVISION 3, CHAPTER 1, OF THE CALIFORNIA CODE OF REGULATIONS, SUBSTANTIALLY IN THE FORM OF THOSE SET FORTH IN EXHIBIT "A", TO BECOME EFFECTIVE ON AUGUST 1, 2005.

6. AUTHORIZE THE COMMISSION STAFF TO MAKE MODIFICATIONS IN THE AMENDMENT IN RESPONSE TO RECOMMENDATIONS BY THE OFFICE OF ADMINISTRATIVE LAW.

7. DIRECT THE COMMISSION STAFF TO TAKE WHATEVER ACTION IS NECESSARY AND APPROPRIATE TO COMPLY WITH PROVISIONS OF THE GOVERNMENT CODE REGARDING ADOPTION OF REGULATIONS AND AMENDMENTS AND TO ENSURE THAT THE AMENDMENT BECOME EFFECTIVE.

8. DIRECT COMMISSION STAFF TO TAKE WHATEVER ACTION IS NECESSARY AND APPROPRIATE TO IMPLEMENT THE AMENDMENT AT SUCH TIME AS IT BECOMES EFFECTIVE.

EXHIBIT A

W 9777.234

Title 2, Division 3, Chapter 1

Article 4.5. Marine Invasive Species Act

Section 2271. Fee Schedule for Marine Invasive Species Control Fund

(a) The Fee required under Public Resources Code Section 71215 is ~~five hundred dollars ($500)~~ four hundred dollars ($400) per vessel voyage.

(b) (1) The Executive Officer of the California State Lands Commission shall invite representatives of persons and entities who must pay the Fee required under Public Resource Code Section 71215 to participate in a technical advisory group to make recommendations regarding the amount of the Fee, taking into account the provisions Public Resources Code Sections 71200 through 71216.

(2) The technical advisory group shall meet on a regular basis after July 1, 2000, as determined by the group.

Authority: Public Resources Code Section 71215(b)
Reference: Public Resources Code Sections 71200 and 71215