

**Minute Item
74**

12/03/99
M. FALKNER
J. KLOMAN, L. PRABHU, M. MEIER

**CALIFORNIA STATE LANDS COMMISSION
(APPLICANT)**

Regular Calendar Item 74 was approved as presented.

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MINUTE ITEM

This Calendar Item No. 74 was approved as Minute Item No. 74 by the California State Lands Commission by a vote of 3 to 0 at its 12-3-99 meeting.

CALENDAR ITEM

74

A: Statewide

12/03/99
W 9777.234

S: Statewide

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CONSIDERATION OF EMERGENCY REGULATIONS SETTING THE FEE TO BE USED TO IMPLEMENT THE STATE'S NEW BALLAST WATER MANAGEMENT PROGRAMS FOR CONTROL OF NONINDIGENOUS SPECIES

PROPOSAL

The Commission's Staff proposes the adoption of an emergency regulation to set the fee required under Public Resources Code Section 71215(b)(1), which is to go into effect on January 1, 2000. This fee, to be used to implement California's new ballast water management programs for control of nonindigenous species, would be set at the maximum level of \$600 for each voyage by a vessel into California if, during that voyage, the vessel has traveled through any location outside the United States' Exclusive Economic Zone.

BACKGROUND

On October 8, 1999, the Governor signed AB 703, which introduced a new division into the Public Resources Code entitled, "Ballast Water Management for Control of Nonindigenous Species" ("the Act"). The purpose of the Act is to establish programs to address the invasion of nonindigenous species into California waterways through ship ballast water. The Act is to go into effect on January 1, 2000.

The emergency action here proposed would be limited solely to setting the exact amount of the fee to be used to support the programs required under the Act. All other elements of the program are, at this time, adequately laid out in the statute, including the authority to set, collect and use the fee. If the amount of the fee is not set, however, the program cannot begin on January 1, 2000, as contemplated by the Legislature.

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While the particular program comes too late to prevent introduction of these and other nonindigenous species already within the State, only through quick action can the State prevent introduction of yet more harmful species. Until the program is underway, though, on any given day, a single shipload of ballast released into California waters could have immeasurable and permanent impacts upon the State's ecology, economy and public health and well being.

To prevent this, the Legislature found that preventing release of foreign ballast water into California is the best means of avoiding yet more invasions of nonindigenous species. The Act therefore establishes a mandatory, multi-agency ballast water management and control program. Responsible agencies include the California State Lands Commission, Department of Fish and Game, State Water Resources Control Board and the Board of Equalization. Each agency is required to work in cooperation with the others in developing reports and conducting research into the extent of current invasions, and potential long-term solutions to the problem of nonindigenous species introductions. The primary focus of the program is the requirement that ships traveling into the State exchange their ballast water prior to entering State waters, and the Commission is charged with implementing an extensive monitoring program to ensure these exchanges are performed. Besides checking required forms to be complete by all vessel operators, the Commission is to take samples of ballast water and sediment from selected vessels and to pursue other actions to assess the compliance with prescribed requirements. The Act also requires the State Water Resources Control Board to evaluate alternatives for managing ballast water and the Department of Fish and Game to conduct studies relating to resident nonindigenous species populations. Additionally, the Act requires the Commission to submit to the Legislature and make available to the public, a report relating to the ballast water management program. Lastly, the Act requires the three above-named state agencies to conduct prescribed research.

In order to carry out all of these efforts, Section 71215 of the Public Resources Code specifically creates an "Exotic Species Control Fund" ("the Fund"). All the activities required by the Act would be paid for through the Fund. The Act also authorizes the Board of Equalization to collect the required fees for the Fund.

All that is necessary, at this point, is for the Commission to set the exact amount of the fee. Only if the collection of the fee begins on January 1, 2000, may the programs under the Act be implemented in time to prevent introduction of yet more nonindigenous species.

The statute allows the Commission to set the fee at a level up to a maximum of \$1000 for each vessel voyage. A "vessel voyage" is defined as a voyage by a vessel into California from a point anywhere outside the United States' Exclusive Economic Zone

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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 21084 and 14 Cal. Code Regs. 15300.

2. The proposed regulatory amendments do not affect small businesses as defined in Government 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 Government Code Section 11342, sub. (h)(2)(I)(vii).

EXHIBIT:

- A. Proposed Amendments.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF CEQA PURSUANT TO TITLE 14, 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 REGULATIONS 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 AN EMERGENCY EXISTS AND THAT THE REGULATIONS ARE NECESSARY FOR THE IMMEDIATE PRESERVATION OF THE PUBLIC HEALTH AND SAFETY AND THE ENVIRONMENT BY PROTECTION OF STATE WATERS AND OTHER NATURAL RESOURCES FROM THE INTRODUCTION AND SPREAD OF NONINDIGENOUS SPECIES ENTRAINED IN BALLAST WATER OF MARINE VESSELS VISITING THE CALIFORNIA PORTS.
4. FIND THAT THE REGULATIONS WILL NOT HAVE A SIGNIFICANT IMPACT ON THE CREATION OR ELIMINATION OF JOBS OR NEW OR EXISTING

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Exhibit "A"

Title 2, Division 3, Chapter 1

Article 4.5. Ballast Water Management for Control of Nonindigenous Species

Section 2270. Ballast Water Management and Control; Definitions

For purposes of this Article, the following definitions apply.

- (a) "Voyage" means any transit by a vessel destined for any California port from a port or place outside the EEZ, including intermediate stops at a port or place within the EEZ. For the purposes of this section, a transit by a vessel from a United States port to any other United States port, if at any time the vessel operates outside the EEZ or equivalent zone of Canada, is also a voyage.
- (b) "EEZ" means exclusive economic zone, which extends from the baseline of the territorial sea of the United States seaward 200 miles.

Section 2271. Fee Schedule for Exotic Species Control Fund

The fee to be established under Public Resources Code Section 71215(b) is to be six hundred dollars (\$600) per vessel voyage.

Authority cited: Public Resources Code Section 71215(b)
Reference cited: Public Resources Code