

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

Amend Section 699.5
Title 14, California Code of Regulations
Re: Lake and Streambed Alteration Agreements.

I. Date of Initial Statement of Reasons: April 13, 2016

II. Dates and Locations of Scheduled Hearings:

Public Hearing: Date: June 13, 2016
 Time: 10:00 am – 11:30 am
 Location: Resources Auditorium
 Natural Resources Building
 1416 9th Street
 Sacramento, CA 95814

III. Description of Regulatory Action:

(a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

Summary

As discussed in greater detail below, the Department of Fish and Wildlife (Department) is proposing the following amendments to the fee schedule for Lake and Streambed Alteration Agreements in Section 699.5, Title 14, California Code of Regulations (CCR):

1. Increase all fees in the existing fee schedule by 129% to generate near term revenues to maintain the current LSA Program at its current level pursuant to Fish and Game Code (FGC) Section 713(g) and FGC Section 1609.
2. Establish for the first time an additional fee for marijuana cultivation sites that require remediation pursuant to FGC Section 12029(d).
4. Add a new category to the fee schedule to allow an entity to pay fees by credit card and to allow the Department to recover credit card company transaction fees.
5. Reorganize some sections in the existing fee schedule.

6. Add and amend some language and reformat some sections in the existing fee schedule.
7. Modify the definition of “master agreement” in the fee schedule.
8. Clarify that the Department has final authority to determine the type of lake or streambed alteration agreement (agreement) an entity may obtain for a particular project.

Discussion

1. Increase All Fees in Existing Fee Schedule

FGC Section 702 authorizes the Department to administer and enforce the provisions of the Fish and Game Code through regulations adopted by the Department. FGC Section 1609 authorizes the Department to “establish a graduated schedule of fees ... in an amount necessary to pay the total costs incurred by the Department in administering and enforcing this [FGC section 1600 *et seq.*], including, but not limited to, preparing and submitting agreements and conducting inspections.” The Department administers and enforces FGC Section 1600 *et seq.* through the Lake and Streambed Alteration (LSA) Program.

Section 1609 also specifies that the Department may adjust the fees in the schedule pursuant to FGC Section 713. FGC Section 713(g) provides: “[A]t least every five years, [the Department] shall analyze all fees for licenses, stamps, permits, tags, and other entitlements issued by it to ensure the appropriate fee amount is charged.”

Previous Changes to the Fee Schedule by the Department

1982: The Legislature in FGC Section 1609 authorized the Department to charge applicants fees to meet one-half of its LSA Program costs.

1991: FGC Section 1609 was amended to require the Department to charge fees to meet its *total* Program costs. In response, the Department amended the fee schedule in July 1991 on an interim basis, and again in May 1992.

2000: The Department amended the fee schedule by increasing all fees 16.75%.

2005: The Department repealed the existing fee schedule and added a new fee schedule to generate revenues sufficient to cover LSA Program costs based on the Fiscal Year (FY) 2003-2004 level of effort to support

34 Person Years (PYs), which was estimated at approximately \$3.4 million. The historic staffing level was not considered sufficient to ensure review of all notifications received and implement compliance or effectiveness monitoring for lake or streambed alteration agreements issued by the Department, and it did not include enforcement. At that time, it was estimated that 44.5 PYs would have been necessary to fully staff the LSA Program.

2006: LSA Program revenues were assessed by reviewing revenue reports for FY 2005-2006 through April and estimating projected revenues for FY 2006-2007. The LSA Program estimated that up to \$800,000 of additional funding would be available to augment LSA Program staff resources in FY 2006-2007. The assessment projected that available funding, if realized, could fund an additional 8 PYs in the LSA Program. PYs were increased 3.3 PYs to 37.3 PYs based upon projected revenues for the future FYs. The revenue projections were never realized due to the economic downturn from 2007 to 2011.

2010: The Department amended the fee schedule by adjusting the fees 12% based on the Implicit Price Deflator (IPD) for 2007, 2008, and 2009 pursuant to FGC Sections 713 and 1609. During this time, the Department made numerous changes to the LSA Program to improve its effectiveness and efficiency, including: (1) improving and standardizing forms and other documents; (2) evaluating and improving administrative procedures; (3) providing staff additional training in a number of disciplines; (4) developing LSA Program consistency; (5) implementing a database system to more efficiently track notifications and monitor agreements; and (6) providing the public access to Department resources, forms, and information on the Department's website.

2014: Fees were adjusted 9.5% for inflation based on the IPDs for 2010, 2011, and 2012 pursuant to FGC sections 713 and 1609.

2015: The Department completed a fiscal analysis to determine if current fees pay for the total costs incurred by the Department in administering and enforcing the LSA Program. The findings of the fiscal analysis were as follows:

- Revenues have declined 17% since 2006.
- Expenditures have increased 13% since FY 2010-2011.
- At current staffing levels, the LSA Program cannot review all notifications received.
- The current fee schedule does not generate sufficient revenues to support the total costs of the LSA Program at its current level.
- The LSA Program's fund balance will be exhausted in FY 2015-

2016.

Based on the above, the Department has determined it is necessary to amend the fee schedule as proposed herein to pay the total costs it incurs to administer the current LSA Program. If the Department does not adjust the fees, it will experience a significant budget shortfall that will affect its ability to administer and enforce FGC Section 1600 *et seq.*, the purpose of which is to protect and conserve the state's fish and wildlife resources.

The Department is also amending the fee schedule to implement the provisions described below that were added to the Fish and Game Code effective January 1, 2013, 2015, and 2016.

2. Establish Additional Fees for Marijuana Cultivation Sites That Require Remediation

Section 12029 was added to the Fish and Game Code as part of the Medical Marijuana Regulation and Safety Act effective January 1, 2016. FGC Section 12029(d) requires the Department to adopt regulations to enhance the fees on any entity subject to FGC Section 1602 for marijuana cultivation sites that require remediation. FGC Section 12029(d) requires the fee schedule adopted thereunder not to exceed the fee limits of FGC Section 1609. Specifically, FGC Section 12029(d) provides:

“In order to facilitate the remediation and permitting of marijuana cultivation sites, the department shall adopt regulations to enhance the fees on any entity subject to Section 1602 for marijuana cultivation sites that require remediation. The fee schedule established pursuant to this subdivision shall not exceed the fee limits in Section 1609.”As FGC Section 12029(d) provides, the additional fees will be used to facilitate the remediation and permitting marijuana cultivation sites.

Rather than create a separate fee schedule to charge these additional fees, the Department is proposing to amend the existing fee schedule for lake and streambed alteration agreements to include a fee category for marijuana cultivation sites that require remediation.

3. Allow Payment of Fees in Fee Schedule by Credit Card

To notify the Department of a project under FGC Section 1602, an entity must submit a written notification and fee to the Department regional office that serves the county where the project will take place. Currently, the Department only accepts payment in the form of a check, a money

order, or a cashier's check.

Many entities prefer and request payment by credit card for convenience. However, the Department does not accept credit cards for payment of notification fees because it will be charged a processing fee by the credit card company, and the current fee schedule does not allow the Department to collect this fee from an entity. Depending on how many entities would pay their notification fee with a credit card, or the other fees the Department proposes to add to the fee schedule, the total annual processing fees charged to the Department could be many thousands of dollars.

For the convenience of the public, the Department proposes to add a provision in the fee schedule that will allow an entity to pay any fee in the fee schedule with a credit card and will allow the Department to collect from the entity a fee to cover the fee the credit company charges the Department to process the transaction. The Department will continue to accept payment of fees in the form of a check, money order, or cashier's check.

4. Reorganize Sections

In addition to the changes discussed above, the Department is proposing to move the definitions for minor and major amendments from the fee category sections to the definition section for consistency.

5. Add and Amend Language and Reformat Some Sections

In addition to the changes described herein, the Department is proposing to add and amend some language, and reformat some sections in the fee schedule to provide clearer guidance to applicants, and for readability, all of which are non-substantive changes. Examples include, but are not limited to, the following:

- Adding "the notification requirement in" to the definition of "activity" in subsection (a)(1).
- Changing "Department of Fish and Game" to "Department of Fish and Wildlife" in the definition of "department" in subsection (a)(6).
- Changing "must" to "shall" throughout the fee schedule.
- Capitalizing the word "section" and "title" throughout the fee schedule.

- Spelling out the number “5” so it reads “five,” in reference to the term of an agreement.
 - Replacing “subdivision” and “paragraph” with “subsection” throughout the fee schedule.
6. Reformat and Modify the Definition of “Master Agreement” in the Fee Schedule.

The Department is proposing to reformat the section defining “master agreement” for greater readability, and to modify the definition to make it clearer when a project qualifies for a master agreement.

7. Clarify Department Authority on Type of Agreement Entity May Obtain

In some instances, the Department has ended up in a dispute with an entity over whether or not the project is eligible for a particular type of agreement. To avoid any future disputes, the Department is proposing to add language to clarify its sole discretion in determining what type of an agreement an entity may obtain for a particular project.

Proposed Regulations

The following amendments, which include additions and deletions, are proposed to the current fee schedule. Minor edits, section citations, clarification, renumbering, grammatical changes, and other non-substantive changes are not identified below. All letter and number references are based on the proposed revised fee schedule.

(a) Definitions.

(7): The definition for “major amendment” in the existing fee schedule will be moved from current subsection (k)(1)(B) to the definition section.

(8): This section defining “master agreement” will be reformatted for greater readability and the definition will be modified to make it clearer when a project qualifies for a master agreement.

(10) The definition for “minor amendment” in the existing fee schedule will be moved from current subsection (j)(1)(B) to the definition section.

(b) Standard Agreement.

(1) and (2): The fees for standard agreements of five years or less and greater than five years will be increased 129% in accordance with FGC

Sections 713(g) and 1609.

(3): Some examples of what should be included when calculating the cost of the project to determine the fee for a standard agreement will be added for guidance to applicants.

(4)(A): Some of the language in subsection (A) will be moved to new subsection (B), and the fees listed in subsection (A) will be adjusted to reflect the proposed fee increases for standard agreements.

(4)(B): This subsection will be added to separately address the Department's authority to require an entity that submits a notification that includes more than one project to separately notify the Department for one or more of the projects in the notification, which is currently addressed in subsection (A), and to describe the process the Department and entity must follow in that event, which is not described in the current fee schedule.

(c) Agreement for Gravel, Sand, or Rock Extraction.

(1) and (2): The fees for agreements for gravel, sand, or rock extraction of five years or less or greater than five years will be increased 129% in accordance with FGC Sections 713(g) and 1609.

(3)(B): Language will be added to clarify when the annual fee must be submitted.

(e) Agreement for Routine Maintenance.

(1) and (2): The fees for agreements for routine maintenance of five years or less or greater than five years will be increased 129% in accordance with FGC Sections 713(g) and 1609.

(3)(A) and (B): Language will be added to clarify when the base fee and project fee must be submitted.

(f): Master Agreement.

(1) The fees for master agreements will be increased 129% in accordance with FGC Sections 713(g) and 1609.

(3)(A) and (B): Language will be added to clarify when the annual fee and project fee must be submitted.

(i) Additional Fee for Marijuana Cultivation Sites That Require Remediation.

This will be added to the existing fee schedule as a new fee category.

(1): This subsection will explain: 1) when the fee specified in subsection (2) must be submitted with a notification under FGC Section 1602; and 2) that this fee will be in addition to the standard fee for an agreement or amendment.

(2)(A) and (B): These subsections will establish the additional fee for marijuana cultivation sites that require remediation based on the size of the remediation site: less than or equal to 1,000 square feet, or greater than 1,000 square feet.

(3): This subsection will specify when the fee identified in subsections (2)(A) or (B) must be submitted.

(j) Extensions for Agreements.

(1): The fee for an extension request will be increased 129% in accordance with FGC Sections 713(g) and 1609.

(k) Minor Amendments.

(1)(A): The fee for a minor amendment will be increased 129% in accordance with FGC Sections 713(g) and 1609

(1)(B): This subsection will specify when the fee identified in subsection (1)(A) must be submitted.

(l) Major Amendments.

(1)(A): The fee for a major amendment will be increased 129% in accordance with FGC Sections 713(g) and 1609.

(1)(B): This subsection will specify when the fee identified in subsection (1)(A) must be submitted.

(o) Method of Payment.

This category will be added to the fee schedule to allow an entity to pay any fee in the fee schedule not just by check or money order, but also by credit card.

(1): This subsection will establish that an entity may pay any fee in the fee

schedule by check, money order, or credit card accepted by the Department.

(2): This subsection will explain how an entity may pay any fee in the fee schedule by credit card.

(3): This subsection will authorize the Department to charge a separate credit card processing fee of 1.6% to any entity that elects to pay a fee in the fee schedule with a credit card.

(p) Refunds.

(1): This subsection will be added to clarify that the Department may only refund or return a fee as specified in subsections (A) – (D), and therefore in no other cases.

(1)(B) and (C): These subsections will be added to the fee schedule to establish two additional instances in which the Department must refund fees.

(q) Type of Agreement.

This category will be added to the fee schedule to clarify (in subsection (1)) that the Department has the sole authority to determine the type of agreement an entity may obtain for a project.

(b) Authority and Reference Sections for Regulation.

Authority cited: Sections 713, 1609, and 12029, Fish and Game Code; and Section 21089, Public Resources Code.

Reference: Sections 713, 1609, and 12029, Fish and Game Code; and Sections 4629.6(c) and 21089, Public Resources Code.

FGC Section 12029 will be added as authority and for reference because the Department proposes to add a fee category for marijuana cultivation sites that require remediation, as discussed herein. Section 713 will be added for reference to correct what appears to be an oversight in the existing fee schedule.

(c) Specific Technology or Equipment Required by Regulatory Change: None.

(d) Identification of Reports or Documents Supporting Regulation Change:

- Lake and Streambed Alteration Program Fiscal Analysis for FYs 2010 – 2014.
- LSA Program Costs Table 2016 – 2018

(e) Public Discussions of Proposed Regulations Prior to Notice Publication:

No public meetings are being held prior to the notice publication. The 45-day comment period provides adequate time for review of the proposed amendments.

IV. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

Lake and Streambed Alteration Agreements

In the course of developing these regulations, the Department evaluated different approaches to address the funding shortfall and to cover total costs of the LSA Program, as follows:

1. Increase fees 278% to approach total cost of a complete LSA Program (i.e., the processing of *all* notifications to agreements plus compliance monitoring and enforcement) (94 PYs).
2. Increase fees 215% to cover the actual cost of the LSA Program (i.e., to cover PYs that assist the LSA Program, but are not assigned to the LSA Program or funded by it) (59 PYs).
3. Increase fees 129% to cover the cost of the current LSA Program (37.4 PYs).
4. Delay the increase, increase efficiency, if possible, or reduce the LSA Program by increasing fees less than 129% and reducing PYs by a corresponding number.

Marijuana Cultivation Sites That Require Remediation

The Department also considered establishing a separate fee schedule for marijuana cultivation sites that require remediation in a separate rulemaking. The Department rejected this alternative because as explained in the Informative Digest/Policy Statement Overview in the notice for this rulemaking and below, the code section that requires the Department to establish fees for these types of projects (i.e., FGC Section 12029(d)) expressly requires the fees to be consistent with the fees the Department adopts under FGC Section 1609.

Specifically, the fees the Department charges under FGC section 12029(d) may “*not exceed the fee limits in [FGC] Section 1609.*” (Fish & G. Code, § 12029, subd. (d), italics added.) In addition, the purpose of FGC Section 12029(d) is not to create a separate fee for marijuana cultivation sites that require remediation, but instead to “enhance” the fee in the existing fee

schedule for lake or streambed alteration agreements that would apply to a remediation project (i.e., absent FGC Section 12029(d)). For this reason, these fees in particular should be added to the existing fee schedule, as the Department proposes.

Based on the foregoing, in addition to the convenience of having one fee schedule for projects that require a lake or streambed alteration agreement, which includes projects to remediate marijuana cultivation sites, the Department decided to amend the existing fee schedule for lake or streambed alteration agreements not only to increase the fees in the existing fee schedule, but also to add a new fee category for remediation of marijuana cultivation sites, as described herein.

(b) No Action Alternative:

If the Department does not amend the fee schedule by increasing the existing fees therein, it will experience a budget shortfall in the LSA Program that will affect its ability to administer and enforce FGC Section 1600 *et seq.*, the purpose of which is to protect and conserve the state's fish and wildlife resources. Such inaction would be contrary to the mandates set forth in FGC sections 713(g) and 1609.

Also, if the Department does not adopt fees for marijuana cultivation sites that require remediation, an applicant will not be able to determine the additional "remediation fee" it will need to pay under FGC Section 12029(d). As explained above, it makes more sense and is more effective to establish these fees by amending the existing fee schedule for lake or streambed alteration agreements. Further, FGC Section 12029(d) expressly requires the Department to "adopt regulations to enhance the fees on any entity subject to [FGC] Section 1602 for marijuana cultivation sites that require remediation." Hence, amending the fee schedule as proposed will bring the Department into compliance with FGC Section 12029(d).

(c) Consideration of Alternatives:

In view of information the Department currently possesses, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the proposed regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The results of the no action alternative will result in a LSA Program reduction from 37.3 PYs to 22.0 PYs, and increase the Department's inability to review notifications from 14% currently to approximately 51%. Eliminating 15 PYs

would undermine the Department's ability to meet the mandate in FGC Section 1609. Hence, the only way the Department can maintain the existing LSA Program, as well as account for the time spent on remediating marijuana cultivation sites, is to increase the fees in the existing fee schedule and to add a new fee category for remediation of marijuana cultivation sites. Significantly, by adopting this alternative, the Department is not trying to expand the LSA Program, but rather to simply maintain it at its current level.

V. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action will have no impact on the environment; therefore, no mitigation measures are needed.

VI. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action 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. The Department's initial determination that its proposed regulatory action will not result in a significant adverse economic impact on business is based on the fact that only those businesses and entities that need to obtain a lake or streambed alteration agreement from the Department or that need to obtain an agreement to remediate a marijuana cultivation site will be affected by proposed action. This means, for example, that an entity that needs to notify the Department under FGC Section 1602 for a project that costs less than \$5,000 (subsection 699.5(b)(1)(A), Title 14, CCR) will need to pay \$561.00, an increase of \$315.50 over the current fee of \$245.50. This cost increase, the increase in the other fees in the fee schedule, and the new fees are not significant compared to permit fees charged by other state governmental agencies (e.g., the State Water Resources Control Board for Waste Discharge Requirements or water right permits).

(b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The proposed action will not result in the creation or elimination of jobs within the State, the creation of new businesses, the elimination of existing businesses, or the expansion of businesses in the State. The Department's initial determination that its proposed regulatory action will not result in a significant adverse economic impact on business is based on the fact that only those businesses and entities that need to obtain a lake and streambed Alteration Agreement from the Department or need to remediate a marijuana cultivation site will be affected by the fee increase. The fees in the fee schedule constitute a small share of total cost of a project, and therefore the proposed fees are not anticipated to be sufficient to precipitate any change in the level of business activity.

The proposed action supports the legislative purpose in FGC Section 1600 to protect the state's fish and wildlife resources by allowing the Department to maintain the current level of service under the LSA Program, and thereby will create benefits to the health and welfare of California residents and the State's environment. The action does not address or affect worker safety.

(c) Cost Impacts on a Representative Private Person or Business:

The Department anticipates that a representative private person or business may incur cost impacts from fee increases for projects subject to FGC Section 1602 ranging from \$300 to \$5,000 per project in the reasonable compliance with the proposed action.

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

Any state agency that engages in work that requires a Lake and Streambed Alteration Agreement from the Department may incur cost impacts from fee increases ranging from \$300 to \$5,000 per project.

(e) Nondiscretionary Costs/Savings to Local Agencies:

Any local agency that engages in work that requires a Lake and Streambed Alteration Agreement from the Department may incur cost impacts from fee increases ranging from \$300 to \$5,000 per project.

(f) Programs Mandated on Local Agencies or School Districts: None.

(g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code: None.

(h) Effect on Housing Costs: None.

(i) Effect on Small Business:

The proposed action is likely to have minor effect on small business by increasing the fee a small business must pay to obtain an agreement. The Department anticipates that a representative small business may incur cost impacts from fee increases for projects subject to FGC Section 1602 ranging from \$300 to \$5,000 per project in the reasonable compliance with the proposed action. For projects to remediate marijuana cultivation sites, the small business will need to pay an additional \$3,000 or \$5,000, depending on the size of the remediation site. However, the proposed action will affect only those small businesses that need to complete a project subject to FGC Section 1602 or remediate a marijuana cultivation site, which will be a relatively small number of small businesses.

VII. Economic Impact Assessment:

The proposed regulatory action would: 1) increase all fees in the existing fee schedule by 129% to generate near term revenues to maintain the current LSA Program at its current level pursuant to Fish and Game Code (FGC) Section 713(g) and FGC Section 1609; 2) establish for the first time an additional fee for marijuana cultivation sites that require remediation pursuant to FGC Section 12029(d); 3) add a new category to the fee schedule to allow an entity to pay fees by credit card and to allow the Department to recover credit card company transaction fees; 4) reorganize some sections in the existing fee schedule; 5) add and amend some language and reformat some sections in the existing fee schedule; 6) modify the definition of “master agreement” in the fee schedule; and 7) clarify that the Department has final authority to determine the type of lake or streambed alteration agreement (agreement) an entity may obtain for a particular project.

Fees for Lake and Streambed Alteration Agreements

The Department conducted a fiscal analysis that found that the current fees in the fee schedule do not fully recover the costs incurred by the Department to administer and enforce FGC section 1600 *et seq.* at its current level, as required by FGC Section 713(g) and 1609 (see Lake and Streambed Alteration Program Fiscal Analysis for FYs 2010 - 2014). As explained above, FGC Section 1609 authorizes the Department to charge fees to any entity subject to FGC Section 1602 in an amount necessary to pay for the total costs the Department incurs in administering and enforcing FGC Section 1600 *et seq.* The fiscal analysis considered four alternatives before recommending the proposed 129% fee increase to cover the cost of the current LSA Program.

Fees for Marijuana Cultivation Sites That Require Remediation

The purpose of FGC Section 12029(d) is to allow the Department to charge an entity that must notify the Department and obtain an agreement to remediate a marijuana cultivation site under FGC Section 1602, a fee *in addition to* the fee the entity will need to pay for a standard agreement for such a project under the existing fee schedule for the LSA Program. (Cal. Code Regs., tit. 14, § 699.5, subd. (b)(1).) As a result, the fees the Department receives under FGC Section 12029(d) will bring some additional revenue to the LSA Program.

However, as with the revenue the current fee categories bring into the LSA Program, the purpose of this additional revenue is to simply offset the costs the LSA Program incurs to administer and enforce FGC Section 1600 et seq. As FGC Section 12029(d) recognizes, the Department's costs associated with remediating and permitting marijuana cultivation sites under FGC Section 1602 are higher than the costs associated with permitting other projects that require a standard agreement under FGC Section 1602.

The fees for marijuana cultivation sites that require remediation were established after evaluating staff hours spent on these projects. For projects to remediate marijuana cultivation sites, the Department identified the following activities Department staff conducts for these projects, and calculated the cost of conducting these activities based on the amount of time expended by staff: initial inspection of the cultivation site; preparing a notice of violation to the responsible party or parties; contacting or meeting with the responsible party or parties; conducting a site visit with the responsible party or parties; conducting an environmental assessment; preparing a draft agreement; and conducting compliance inspections over a five year period, as shown in Table 3 below.

Table 3. Staff Time Associated with Remediation and Permitting of Marijuana Cultivation Sites

Required Tasks	Smaller Site Hours	Larger Site Hours	Rate	Smaller Site	Larger Site
1. Initial inspection of the cultivation site	4.0	8.0	49.52	\$ 198	\$ 396
2. Preparing a notice of violation to the responsible party or parties	4.0	8.0	49.52	\$ 198	\$ 396
4. Contacting or meeting with the responsible party or parties	1.5	1.5	49.52	\$ 74	\$ 74
4. Conducting a site visit with the responsible party or parties	4.0	8.0	49.52	\$ 198	\$ 396
5. Conducting an environmental assessment	2.0	4.0	57.01	\$ 114	\$ 228
6. Preparing a draft agreement	12.0	20.0	57.01	\$ 684	\$ 1,140
7. Conducting compliance inspections over a five year period	15.0	21.5	49.52	\$ 743	\$ 1,065
Subtotal				\$ 2,209	\$ 3,696
Overhead			35%	\$ 773	\$ 1,293
Total Costs				\$ 2,983	\$ 4,989
Rounded				\$ 3,000	\$ 5,000

Based on the above and the hourly rate for an Environmental Scientist and a Senior Environmental Scientist (Specialist), the Department's estimated cost ranged from approximately \$3,000 to \$5,000 per remediation project for which a standard agreement is required. The amount of time staff spends inspecting the site and preparing an assessment of the site depends on the size of the site, which accounts for the cost range. The fees for marijuana cultivation sites that require remediation were also set after evaluating the staff hours and other operational costs required.

The Department further determined that the amount of time staff spends inspecting the site and preparing an assessment of the site depends on the size of the site. The Department also determined that any agreement it would issue for a remediation project would be for a term of five years or less, and therefore in accordance with FGC Sections 1609(b)(1) and 12029(d), the Department would not be able to charge an additional fee in excess of \$5,000 that requires remediation. Based on the above and the hourly rate for an Environmental Scientist and an Environmental Scientist (Specialist), the Department's estimated cost ranged from approximately \$3,000 to \$5,000 per remediation project.

Based on the foregoing, the Department created two fee categories: \$3,000 for sites 1,000 square feet or less, and \$5,000 for sites greater than 1,000 square feet. The Department determined that these additional fees should be sufficient to "facilitate the remediation and permitting of marijuana cultivation sites" (Fish & G. Code, § 12029, subd. (d)), by covering the estimated cost the Department incurs for these projects.

The Department cannot estimate the revenue the additional fees for marijuana cultivation sites that require remediation will generate. The amount of revenue will depend on the number of marijuana cultivation sites that Department staff investigate in any given year; of those sites, how many will require remediation; and of those sites, how many will need to, and actually apply for and obtain an agreement under FGC Section 1602 to complete the remediation, among other variables. However, for comparison, in 2015, the Department conducted approximately 200 inspections of marijuana cultivation sites. Of those sites, approximately 180 were not in compliance with FGC Section 1602, and almost all of those sites were over 1,000 square feet in size. If all 180 sites complied with Section 1602 by notifying the Department and obtaining an agreement under FGC Section 1602, and all 180 sites were over 1,000 square feet, under the proposed action, the Department would receive additional revenue in the amount of \$900,000 (180 multiplied by \$5,000).

Credit Card Processing Fee

Finally, the 1.6% transaction fee for credit card use was set based on a credit card "invoice" prepared by the Department's License and Revenue Branch (LRB). The

invoice shows the monthly revenue LRB received from its customers from January to November 2015. LRB's credit card processor uses LRB's invoice to determine the monthly fee it charges LRB to process LRB's credit card transactions. The average fee LRB paid over this eleven month period was 1.56%. The Department used this number, and rounded it to 1.6% to establish the credit card processing fee in the proposed fee schedule. The Department cannot accept credit cards for the payment of fees in the fee schedule until it authorizes such use by regulation, as proposed herein.

(a) Effects of the Regulation on the Creation or Elimination of Jobs Within the State:

The cumulative effects of the changes statewide are expected to be neutral with regard to the creation or elimination of jobs within the State.

(b) Effects of the Regulation on the Creation of New Businesses or the Elimination of Existing Businesses Within the State:

The cumulative effects of the changes statewide are expected to be neutral with regard to the creation of new businesses or the elimination of existing businesses within the State.

(c) Effects of the Regulation on the Expansion of Businesses Currently Doing Business Within the State:

The cumulative effects of the changes statewide are expected to be neutral with regard to expansion of businesses currently doing business within the State.

(d) Benefits of the Regulation to the Health and Welfare of California Residents:

The Department anticipates benefits to the health and welfare of California residents by maintaining the Department's capacity to protect the state's aquatic and riparian habitats and the fish and wildlife resources that depend on them through the administration and enforcement of FGC Section 1600 *et seq.*

(e) Benefits of the Regulation to Worker Safety:

The existing fee schedule and the proposed changes to the fee schedule do not address or affect worker safety.

(f) Benefits of the Regulation to the State's Environment:

The cumulative effects of the changes statewide are expected to be positive

with regard to the state's environment. It is the policy of this state to encourage the conservation and maintenance of lakes and streams, and the fish and wildlife resources that depend upon aquatic and riparian habitats, for their use and enjoyment by the public. The proposed regulations provide the Department the ability to charge fees in the amount necessary to pay the total costs its incurs to administer and enforce the LSA Program at its current level and the additional costs it incurs to remediate marijuana cultivation sites, the purposes of which are to protect and conserve the state's fish and wildlife resources.

(g) Other Benefits of the Regulation:

Entities will save time associated with completing and submitting lake and streambed notifications as well as making payment by credit card. Electronic records of notification fees will be easier to maintain for business purposes. The Department will experience a savings in staff time associated with editing and entering hardcopy forms into an electronic database. With built-in checks and validations, electronic notification fee records will provide the Department with more accurate data on which to base management decisions.

Informative Digest/Policy Statement Overview

Proposed Amendments to Section 699.5, Title 14, California Code of Regulations (CCR), Fees for Lake and Streambed Alteration Agreements:

Fish and Game Code (FGC) section 702 authorizes the Department to administer and enforce the provisions of the Fish and Game Code through regulations adopted by the Department.

FGC Section 1609 authorizes the Department to charge fees to any entity subject to FGC Section 1602 in an amount necessary to pay for the total costs the Department incurs in administering and enforcing Fish and Game Code Section 1600 *et seq.*, referred to by the Department as the Lake and Streambed Alteration (LSA) Program. The Department's existing fee schedule for Lake and Streambed Alteration Agreements (fee schedule) is in Section 699.5 in Title 14 of the California Code of Regulations (CCR).

FGC section 12029(d) requires the Department to adopt regulations "to enhance the fees on any entity subject to [FGC] Section 1602 for marijuana cultivation sites that require remediation."

Adoption of these proposed regulations will:

- Increase all fees in the existing fee schedule by 129% to generate near term revenues to maintain the existing LSA Program at its current level pursuant to Fish and Game Code (FGC) Section 713(g) and FGC Section 1609.
- Establish for the first time an additional fee for marijuana cultivation sites that require remediation pursuant to FGC Section 12029(d).
- Add a new category to the fee schedule to allow an entity to pay fees by credit card and to allow the Department to recover credit card company transaction fees.
- Reorganize some sections in the existing fee schedule.
- Add and amend some language and reformat some sections in the existing fee schedule.
- Modify the definition of "master agreement" in the fee schedule.
- Clarify that the Department has final authority to determine the type of lake or streambed alteration agreement (agreement) an entity may obtain for a particular project.

BENEFITS OF THE PROPOSED REGULATIONS

Fees for Lake or Streambed Alteration Agreements

The Department must adjust the fees in the fee schedule for lake or streambed alteration agreements periodically to pay the total costs it incurs to administer and

enforce the Department's LSA Program. If the Department does not adjust the fees as proposed, it will experience a significant budget shortfall that will affect its ability to administer and enforce FGC Section 1600 *et seq.*, the purpose of which is to protect and conserve the state's fish and wildlife resources, as set forth in FGC Section 1600.)

Fees for Projects to Remediate Marijuana Cultivation Sites

Rather than establish a new fee schedule under a separate section in CCR, Title 14, the Department has decided to establish these fees by adding a new fee category in the existing fee schedule for lake or streambed alteration agreements. This is because the code section that requires the Department to establish fees for these types of projects expressly require the fees be consistent with the fees the Department adopts under FGC Section 1609.

By adopting the proposed regulations, the Department does not anticipate benefits to the protection of worker safety, the prevention of discrimination, the promotion of fairness or social equity, or to the increase in openness and transparency in business and government.

The Department anticipates nonmonetary benefits to the health and welfare of California residents through the protection of aquatic and riparian habitats and the fish and wildlife resources that depend on them. The Department also anticipates benefits to the environment. The fee increases and new fees included in this rulemaking will enable the Department to maintain the LSA Program at its current level and to facilitate the remediation of marijuana cultivation sites, thereby conserving and protecting the state's fish and wildlife resources, the express purpose of FGC Section 1600 *et seq.* and FGC Section 12029.

EVALUATION OF INCOMPATIBILITY WITH EXISTING REGULATIONS

The Department has reviewed Title 14 in the CCR and has determined that the proposed action is neither inconsistent nor incompatible with existing state regulations.

[Insert Regulatory Text here]