

TITLE 14. DEPARTMENT OF FISH AND WILDLIFE
NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Department of Fish and Wildlife (Department) proposes to adopt regulations regarding: 1) fees for lake and streambed alteration agreements; and 2) fees for marijuana cultivation sites that require remediation, all described below (proposed action), after considering all comments, objections, and recommendations regarding the proposed action. The Department invites interested persons to present statements or arguments with respect to alternatives to the regulations at the scheduled hearing or during the written comment period.

PUBLIC HEARING

The Department will hold a public hearing on **June 13, 2016, from 10:00 a.m. to 11:30 a.m.**, at the Natural Resources Building, Resources Auditorium, 1416 9th Street, Sacramento, California. The Resources Auditorium is wheelchair accessible. At the public hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Department requests, but does not require, that the persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments on the proposed action to the Department. All written comments must be received by the Department no later than 5:00 p.m. on June 13, 2016.

For the Department to consider any written comments, the comments must be submitted at the hearing or by mail, fax, or e-mail no later than 5:00 p.m. on June 13, 2016, as follows:

California Department of Fish and Wildlife
Lake and Streambed Alteration Program
Attn: Lance Salisbury, Senior Environmental Scientist
1416 Ninth Street, 12th Floor, Sacramento, CA 95814
Fax: (916) 653-2588
Email: lance.salisbury@wildlife.ca.gov

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.

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.

DOCUMENTS RELIED UPON

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

DISCLOSURES REGARDING THE PROPOSED ACTION

- (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. Only entities that must notify the Department for a

particular project under FGC Section 1602 or to remediate a marijuana cultivation site will be affected by the proposed action. The proposed fee increases and new fees in the fee schedule are not significant compared to the cost of the particular projects to which the fees apply and the cost to the public if such environmental protections were not in place.

- (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 impact the creation or elimination of jobs within California, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses in California because only entities required by statute to obtain an agreement from the Department, including to remediate a marijuana cultivation site, will be affected by the proposed action. The proposed fee increases and new fees in the fee schedule are not significant compared to the cost of the particular projects to which the fees apply.

The proposed action supports the Department's statutory mandate to reduce impacts on the state's environment, and thereby create benefits to the health and welfare of California residents. The proposed 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. For projects to remediate marijuana cultivation sites, the person or business will need to pay an additional \$3,000 or \$5,000, depending on the size of the remediation site.

- (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. The Department does not anticipate that a state agency will need to remediate a marijuana cultivation site, but if it must remediate a site, the agency would need to pay an additional \$3,000 or \$5,000, depending on the size of the remediation site.

- (e) Nondiscretionary Costs/Savings to Local Agencies:

Any local agency that engages in work that requires a lake or streambed alteration

agreement from the Department may incur cost impacts from fee increases ranging from \$300 to \$5,000 per project. The Department does not anticipate that a local agency will need to remediate a marijuana cultivation site, but if it must remediate a site, the agency would need to pay an additional \$3,000 or \$5,000, depending on the size of the remediation site.

- (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.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The Department does not anticipate any impacts on the creation or elimination of jobs, the creation of new business, the elimination of existing businesses, the expansion of businesses in California, or benefits to worker safety.

Benefits to the Health and Welfare of California Residents:

The Department anticipates benefits to the health and welfare of California residents from better protection of the State's natural resources.

BENEFITS TO THE STATE'S ENVIRONMENT

The Department anticipates the cumulative effects of the changes to be positive with regard to the state's environment. The proposed regulations provide the Department the ability to collect fees in the amount necessary to pay the total costs it incurs to administer and enforce FGC Section 1600 *et seq.* and to remediate marijuana cultivation sites, the purposes of which are to protect and conserve the state's fish and wildlife resources.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective as and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

MITIGATION MEASURES REQUIRED BY REGULATORY ACTION

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

CONTACT PERSONS

Inquiries concerning the proposed administrative action should be directed to:

Lance Salisbury, Senior Environmental Scientist
California Department of Fish and Wildlife
Lake and Streambed Alteration Program
1416 Ninth Street, 12th Floor, Sacramento, CA 95814
Telephone: (916) 653-3559
Email: lance.salisbury@wildlife.ca.gov

The backup contact person is:

Cathie Vouchilas, Environmental Program Manager
California Department of Fish and Wildlife
Lake and Streambed Alteration Program
1416 Ninth Street, 12th Floor, Sacramento, CA 95814
Telephone: (916) 651-1190
Email: cathie.vouchilas@wildlife.ca.gov

Please direct requests for copies of the proposed text (the “express terms”) of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Lance Salisbury (see above for contact information).

AVAILABILITY OF THE INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Department will have the entire rulemaking file available for inspection and copying at its office at the above address. As of the date this notice is published, the rulemaking file consists of:

- Notice of Proposed Rulemaking
- Proposed Regulatory Text
- Initial Statement of Reasons
- Lake and Streambed Alteration Program Fiscal Analysis for FYs 2010 – 2014
- LSA Program Costs Table 2016 – 2018; and
- Economic and Fiscal Impact Assessment (STD. Form 399).

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Website Access: The rulemaking file is available at:

<https://www.wildlife.ca.gov/Notices/Regulations>

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received by the Department, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Lance Salisbury (see above for contact information). The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Lance Salisbury (see above for contact information).