

STATE OF CALIFORNIA
DEPARTMENT OF FISH AND WILDLIFE

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

FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

- I. Date of Initial Statement of Reasons: April 13, 2016
- II. Date of Final Statement of Reasons: July 19, 2016
- III. Dates and Locations of Scheduled Hearings:
 - Public Hearing: Date: June 13, 2016
Location: Resources Auditorium
Resources Building
1416 9th Street
Sacramento, CA 95814
- IV. Update:

Addendum to Initial Statement of Reasons – First 15-Day Continuation of Public Comment Period

On June 7, 2016, during the 45-day comment period the Department prepared an addendum to the Initial Statement of Reasons (ISOR) and a revised Economic and Fiscal Impact Statement (STD Form 399) at the request of the Department of Finance. The addendum and revised STD Form 399 provide a revised estimate of the revenue the Department may receive from fees for marijuana cultivation sites that require remediation. The Department estimates that it may inspect between 600 – 1000 marijuana cultivation sites annually. Based on 2015 data, the Department anticipates 540 – 900 of these sites will require remediation. Annual fee revenues for remediation of marijuana cultivation sites would range from \$1.8 million to \$4.5 million, depending on the actual number of sites inspected and the respective area (square-feet per site) requiring remediation.

As recommended by the Office of Administrative Law, the Department notified by email or first class mail *all* interested parties who received the original notice of the changes made to the ISOR, rather than only those persons who testified at the public hearing, those persons who provided written comments at the public hearing, persons whose comments were received during the public comment period, and those persons who requested notification of the availability of changes in the text of the proposed regulations, as Government Code section 11347.1,

subdivision (b), requires only. (See “Statement of Mailing 15-Day Notice” in the rulemaking file.)

No changes to the originally proposed regulatory text were needed.

Change to Text of Proposed Regulation – Second 15-Day Continuation of Public Comment Period

On June 30, 2016, the Department modified the proposed regulatory text submitted with the original Notice of Proposed Action. New subsection 699.5(i)(3)(B) in Title 14 of the California Code of Regulations (CCR) underscores that the additional fees specified in Section 699.5(i)(2)(A) and (B) apply *only* to entities that must notify the Department to remediate a marijuana cultivation site. The language in the new subsection reads in its entirety:

“The additional fees specified in subsections (i)(2)(A) and (B) shall apply only to entities notifying the department for remediation associated with a marijuana cultivation site, and in no other circumstance.”

The Department added this clarifying language to eliminate a concern raised by some members of the regulated community that the Department is applying Fish and Game Code (FGC) Section 12029(d) to raise fees on all entities, rather than *only* those entities that must notify the Department and if necessary, obtain a Lake or Streambed Alteration Agreement to remediate a marijuana cultivation site.

Section 40, Title 1, CCR deems changes to the original text of a regulation “nonsubstantial” “if they clarify without materially altering the requirements, rights, responsibilities, conditions, or prescriptions contained in the original text.” (Cal. Code Regs., tit. 1, §40.) For the reasons below, the Department considers this additional language in Section 699.5(i), Title 14, CCR to be “nonsubstantial” as that term is used in Government Code section 11346.8(c), and therefore a change without regulatory effect under Section 100, Title 1, CCR. Nonetheless, the Department elected to provide a notice of the change consistent with Government Code Section 11346.8(c) and Section 44, Title 1, CCR.

- As set forth in the ISOR, this rulemaking would: 1) increase all fees in the existing fee schedule to generate near term revenues to maintain the *current* Lake and Streambed Alteration Program at its current level, pursuant to FGC Sections 1609 and 713(g), and 2) separately, would establish *for the first time* an additional fee for any entity that must notify the Department to remediate a marijuana cultivation site, pursuant to FGC Section 12029(d). (See ISOR, p. 1, pp. 2 – 4.)
- Accordingly, even absent the proposed additional language, the fee schedule’s structure indicates (e.g., separate fee categories) and the text in

Section 699.5(i)(1) provides that an entity would only need to pay the additional fee in Section 699.5(i)(2)(A) or (B) if the entity were to notify the Department to remediate a marijuana cultivation site.

- The Department is relying on separate statutes to increase the fees in the existing fee schedule (FGC Sections 1609 and 713(g)) and to add a new fee category for remediation of marijuana cultivation sites (FGC Section 12029(d)).

FGC Section 1609 requires the Department to charge fees in an amount necessary to pay for the total cost it incurs to administer and enforce FGC Section 1600 *et seq.* FGC 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.”

In contrast, 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. As the Department goes on to explain in the ISOR, to implement FGC Section 12029(d), it is adding a new fee category, Section 699.5(i), Title 14, CCR.

In sum, the ISOR, the original regulatory text, and the statutory authority the Department is relying on for this rulemaking indicate that: 1) the Department is not applying FGC Section 12029(d) to all entities, but *only* those entities that need to notify the Department to remediate a marijuana cultivation site; and 2) *only* those entities that notify the Department to remediate a marijuana cultivation site will need to pay the additional fee set forth in proposed Section 699.5(i)(2)(A) or (B), Title 14, CCR. For these reasons, the Department views the addition of the additional language in Section 699.5(i)(3)(B) as a nonsubstantial change.

An agency is not required to make available to the public nonsubstantial changes to the original text of a regulation. However, as mentioned above, the Department elected to send a notice of the modified regulatory text consistent with Government Code Section 11346.8(c) and Section 44, Title 1, CCR so: 1) those members of the regulatory community that raised the concern described above would know the Department took their concern seriously and addressed it by adding the clarifying language; 2) those members would be able to comment on the language; and 3) whether or not the change the Department made to the regulatory text is nonsubstantial, it is “sufficiently related,” as defined in Section 42, Title 1, CCR, for the same reasons explained above.

The notice was sent by electronic mail on June 30, 2016 and July 1, 2016 to all persons who testified at the public hearing, all persons who submitted written comments at the public hearing, all persons whose comments were received

during the public comment period (as continued by the first 15-day notice), and all persons who had requested notification of regulatory changes. Notice was sent to all recipients at least 15 days before the Department adopted the regulations on July 19, 2016. The comment period began on June 30, 2016, and ended on July 18, 2016.

Non-Substantive Changes Made to Text of Proposed Regulations after Close of Second 15-Day Continuation of Public Comment Period

The Department reopened the rulemaking file on August 24, 2016, and closed it again on August 26, 2016, to make the following changes to the text of the proposed regulations, all of which are non-substantive (Cal. Code Regs., tit. 1, § 100):

- §699.5(a)(3)(B): Added “for” in strikeout before “to complete” because “for” is existing regulatory text that was inadvertently left out.
- §699.5(a)(8)(B): Changed “must” to “shall” to be consistent with other parts of the final regulatory text where the Department changed “must” to “shall.”
- §699.5(n)(1): Moved “or” in strikeout to follow “notification,” to match existing regulatory text.
- §699.5(o)(2):
 - Added Payment” after “Credit Card” to match the exact title of the form: “Credit Card Payment Authorization Form.”
 - Added “(DFW 1443b (8/15)), incorporated herein by reference” after “Credit Card Payment Authorization Form” in accordance with Section 20(c)(4), Title 1, CCR. The Department incorporated the form by reference because the form is often subject to change by credit card companies, and therefore it would be cumbersome and impractical to publish it in the California Code of Regulations. The form was available to the affected public on the Department’s website and at Department offices throughout California during the rulemaking, and it will continue to be available from these sources after the proposed regulation takes effect. A copy of the form follows the Final Regulatory Text (Rulemaking File, Exhibit K).
- Reference: Added FGC section 1605 to the reference section because the proposed regulation implements, interprets, or makes specific various provisions in section 1605. (Cal. Code Regs, tit. 1, § 14, subd. (b).)

V. Summary of Primary Considerations Raised in Support and in Opposition:

45-Day Comment Period

The Department received four written comments during the 45-day review period. Copies of these comments are included in Attachment A. The Department's responses to these comments are included in Attachment B.

June 13, 2016 Public Hearing

A public hearing as previously noticed was opened at 10:05 a.m. on June 13, 2016. The Department was represented at the hearing by Regulations Unit Manager, Craig Martz, and Senior Environmental Scientist (Specialist) Lance Salisbury with the Department's Lake and Streambed Alteration (LSA) Program. Three members of the public attended the hearing and oral testimony was received from Ms. Noelle Cremers representing the California Farm Bureau Federation. The hearing was closed at 11:30 a.m. Responses to comments received during the public hearing are included in Attachment B.

First 15-Day Continuation of Public Comment Period

The Department received four written comments during the first 15-day continuation of the initial public comment period for the addendum to the ISOR described above in Section IV and the updated informative digest.

Second 15-Day Continuation of Public Comment Period

The Department received one written comment during the second 15-day continuation of the public comment period for the change to the regulatory text described above in Section IV and the updated informative digest.

Copies of all comments received during the initial and two continued comment periods are included in Attachment A. The Department's responses to these comments are included in Attachment B.

VI. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:

California Department of Fish and Wildlife
Regulations Unit
1416 Ninth Street, 12th Floor
Sacramento, CA 95814

VII. Location of Department Files:

California Department of Fish and Wildlife
Lake and Streambed Alteration Program
1700 Ninth Street, 2nd Floor
Sacramento, CA 95814

VIII. 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 adopted 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.

IX. 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.

ATTACHMENT A

PUBLIC COMMENTS

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

The Department of Fish and Wildlife received comments during the public comment period from the individuals and organizations listed below. The public comment period included the original 45-day comment period and two 15-day continuations of the comment period. The public comment period began on April 29, 2016, with publication of the Department's Notice of Proposed Rulemaking, and ended on July 18, 2016, at the end of the second continuation of the comment period. Copies of the written comments and the minutes from the public hearing on June 13, 2016, which includes a summary of the testimony received at the hearing, are included as part of this attachment. The Department's responses to the comments and testimony are included as Attachment B.

45-Day Comment Period: Proposed Rulemaking

1. Kevin Gaston, May 2, 2016 (email)
2. Richard Boyd, May 14, 2016 (email)
3. Natalynne DeLapp, Environmental Protection Information Center (EPIC), May 25, 2016 (letter)
4. Staci Heaton, Rural County Representatives of California and California State Association of Counties, June 9, 2016 (letter)

Public Hearing

5. Noelle C. Cremers, California Farm Bureau Federation, June 13, 2016 (testimony)

First 15-Day Continuation: Addendum to Initial Statement of Reasons and Economic Impact Assessment (STD. 399) Regarding Revenues from Fees for Marijuana Cultivation Sites That Require Remediation

6. California Farm Bureau Federation, California Chamber of Commerce, Western Growers, California Cattlemen's Association, and California Wool Growers Association, June 24, 2016 (letter).
7. Frost Pauli, Mendocino County Farm Bureau, June 24, 2016 (letter)
8. Gerald D. Secundy, California Council for Environmental and Economic Balance, June 29, 2016 (letter with two attachments)

9. Erika Lovejoy, Sustainable Conservation, June 29, 2016 (letter)

Second 15-Day Continuation: Change to Regulatory Text Regarding Payment of Fees
for Marijuana Cultivation Sites That Require Remediation

10. Gerald Secundy, California Council for Environmental and Economic Balance, July
12, 2016 (letter)

**COPIES OF COMMENTS RECEIVED
(WITH INDEXING BY DEPARTMENT)**

From: Kevin Gaston [mailto:kgaston@mountainstrust.org]
Sent: Monday, May 02, 2016 7:39 AM To:
Salisbury, Lance@Wildlife Subject: Fee Waiver
for Restoration Work

Lance,

MRT is a non-profit organization that operates in the Santa Monica Mountains.

a

After reviewing the proposed rulemaking for the LSA Program, we'd like to know if any existing or proposed portions of the program allow for a Fee Waiver for work that involves ecological restoration.

Thanks,

Kevin Gaston
Ecological Science & GIS Technician Mountains Restoration Trust
kgaston@mountainstrust.org

lance.salisbury@wildlife.ca.gov

- a Mr. Salisbury, has DFW been in contact with the Howard Jarvis Tax Association and the Board of Equalization?
- b The increase in fee seems to be based on fee for service and not a tax.
However Proposition 13 and Proposition 218 may see a fee increase as an increase in taxes.
- c If the fees are collected not by DFW but by some other agency on behalf of DFW, that agency may want more money.

RICHARD BOYD

9953 Gary Drive

Browns Valley, CA 95918

530 639 2360

dickboyd@aol.com

Sent via electronic mail on date shown below

Lance Salisbury
California Department of Fish and Wildlife
Lake and Streambed Alteration Program
1416 Ninth Street, 12th Floor
Sacramento, CA 95814
Email: lance.salisbury@wildlife.ca.gov

May 25, 2016

Dear Ms. Salisbury

I write on behalf of the Environmental Protection Information Center (EPIC). EPIC enthusiastically supports the proposed amendments to the fee schedule for Lake and Streambed Alteration Agreements in Section 699.5, Title 14, California Code of Regulations (CCR). EPIC wishes to highlight how two of the proposed amendments will affect environmental issues in Humboldt County associated with cannabis production.

- a First, as to proposed increases in regulatory fees, EPIC believes that this amendment is necessary to meet Section 1609's commandment that program costs be wholly borne by program fees. As confirmed by the Department's fiscal analysis, revenues have declined but program costs have increased such that "current fee schedule does not generate sufficient revenues to support the total costs of the LSA Program at its current level."

Humboldt County's recently passed "Commercial Medical Marijuana Land Use Ordinance," Ordinance No. 2544 depends, in part, on the Streambed Alteration Permit program to ensure that operations will not adversely affect watercourses. Our local regulatory program therefore depends on the Department being able to fully implement its Lake and Streambed Alteration program, which is at risk as the "[t]he LSA Program's fund balance will be exhausted in FY 2015-2016."

- b Second, Humboldt County has numerous cannabis sites that need immediate remediation. Many sites were established in former industrial forestlands and rely

- b on outdated and poorly maintained road networks. Many other locations have other historic and ongoing water quality issues that need addressing, including channel bed alteration. EPIC believes that these problem sites disproportionately contribute to water quality issues. We support increased fees for sites that require remediation as a reasonable measure to ensure that identified issues are actually addressed.

Thank you for considering our comments. We look forward to continuing to work with the Department to address environmental concerns in the cannabis industry. If you have any questions, please do not hesitate to contact me at (707) 822-7711 or natalynne@wildcalifornia.org

Sincerely,



Natalynne DeLapp
Executive Director



June 9, 2016

Mr. Lance Salisbury, Senior Environmental Scientist
California Department of Fish & Wildlife
Lake and Streambed Alteration Program
1416 9th St., 12th Floor
Sacramento, CA 95814

RE: Proposed Rulemaking on Fees for Lake and Streambed Alteration Agreements

Dear Mr. Salisbury:

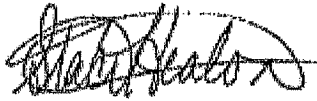
The Rural County Representatives of California (RCRC) is an association of thirty-five rural California counties, and the California State Association of Counties (CSAC) represents all fifty-eight California Counties. Our member counties are tasked with a variety of decision-making responsibilities related to land use and development in California communities and are challenged with environmental stewardship, economic vitality, and social equity at the local level. RCRC and CSAC welcome this opportunity to provide comment on the proposed rulemaking on fees for Lake and Streambed Alteration (LSA) Agreements.

- Counties are required to participate in the Lake and Streambed Alteration Program for a number of county projects including road and bridge construction and maintenance, vegetation removal and remediation, watershed restoration, and a variety of other projects. While we appreciate the Department's need to meet budgetary goals, the proposed 129 percent increase in LSA Agreement fees is excessive, particularly since the fiscal analysis released with the rulemaking indicates that most of the increases in the Department's expenses are due to staffing, salary, and benefits increases. The proposed increase is significant, particularly for many counties that have among the highest unemployment rates and lowest countywide median household incomes in the State. Many counties aren't in a position to raise their own fees in order to cover such a costly fee increase, particularly when the Department is now also proposing to implement an unreasonably high fee structure for California Endangered Species Act permits as part of the 2016-17 State Budget process. RCRC and CSAC recommend that the Department extend the public process on the rulemaking and work with impacted stakeholders to explore other options to make the LSA Agreement process more efficient for Department staff, rather than unilaterally imposing such a drastic fee increase.
- a
- b
- c

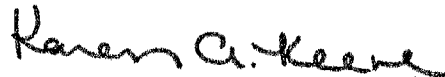
d While our organizations do not support the proposed increase, we do support including marijuana cultivation sites in need of remediation in the LSA Program. Many of our member counties that are prime cultivation areas for cannabis growers have seen years of damage to fish and wildlife from renegade growing activities. RCRC and CSAC fully support inclusion of these sites in the program to help pay the costs of remediating the damage done through these operations.

If you should have any questions or would like to discuss our comments further, please contact Staci Heaton of RCRC at (916) 447-4806 or Karen Keene of CSAC at (916) 650-8181.

Sincerely,



STACI HEATON
Regulatory Affairs Advocate
RCRC



Karen A. Keene
Senior Legislative Representative
CSAC

cc: Charlton Bonham, Director, California Department of Fish and Wildlife

**STATE OF CALIFORNIA
DEPARTMENT OF FISH AND WILDLIFE
MINUTES OF THE PUBLIC HEARING**

Date: June 13, 2016

Location: Resources Agency
1416 Ninth Street,
First Floor Auditorium Sacramento, CA 95814

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

CDFW staff attending: Craig Martz, Rick Macedo, Cathie Vouchilas, Lance Salisbury, Margaret Duncan, and Mike Randall.

Members of the public attending: Noelle Cremers, California Farm Bureau Federation; Hezekiah Allen, California Growers Association; and Juliana Morozumi, Department of Finance.

10:05 a.m. Hearing Opening by Craig Martz

Mr. Martz, Regulations Unit Manager for the Department of Fish and Wildlife (Department) welcomed everyone to the meeting and introduced the Department staff involved in the rulemaking. He asked people to sign in and if they were planning to speak, to submit a speaker card so he could call individuals to the podium. Mr. Martz also indicated that the Department had prepared an addendum to the Initial Statement of Reasons and a revised Economic Impact Statement in response to comments from the Department of Finance. Mr. Martz explained that the revised documents are available for public comment on the Department's web page for an additional period of 15 days at: <https://www.wildlife.ca.gov/Notices/Regulations/LSA>.

Mr. Martz described the purpose of the hearing under the Administrative Procedure Act and introduced Senior Environmental Scientist, Lance Salisbury, who provided a brief PowerPoint presentation giving an overview of the proposed regulations.

Mr. Martz went on to describe the oral comment process:

- The hearing is being recorded and we are also taking notes, so when you are called to the podium please state your name before you begin. Please make sure the audience can hear you.
- Commenters will have five minutes to present their testimony.

10:15 a.m. Public Comments

Only one individual testified at the hearing.

Noelle Cremers, California Farm Bureau Federation.

- a) Asked for clarification regarding the changes resulting from the 2013 timber tax.
- b) The 129% increase in fees is significant for our members.
- c) The fees should not be looked at in isolation; in combination with State Water Board and CEQA fees, they are substantial.
- d) The Farm Bureau Federation is willing to sit down with the Department to look at improving program efficiencies.

10:25 a.m. Mr. Martz asked if there was anyone else who wished to speak.

Hearing no additional requests, Mr. Martz thanked everyone for their comments. Mr. Salisbury and Ms. Vouchilas remained in the auditorium until 11:30 a.m. to wait for other members of the public to arrive. No other members of the public arrived at the hearing. Therefore, the Department formally closed the hearing at 11:30 am.



June 24, 2016

Sent via E-mail to: lance.salisbury@wildlife.ca.gov

Lance Salisbury, Senior Environmental Scientist
 California Department of Fish and Wildlife
 Lake and Streambed Alteration Program
 1416 Ninth Street, 12th Floor
 Sacramento, CA 95814

RE: Lake and Streambed Alteration Program Fee Increase Proposal

Dear Mr. Salisbury:

The signatories to this letter appreciate the opportunity to comment on the Department of Fish and Wildlife's (Department) proposed fee increase for Lake and Streambed Alteration Agreements (LSAA). Our organizations represent a diverse group of farmers and ranchers engaged in production agriculture who provide a reliable supply of food and fiber through responsible stewardship of California's resources. Many of our members are required to notify the Department of activities they are undertaking in the bed, bank, or channel of stream. This process is costly to California's farmers and ranchers, both through the fees assessed and the costs associated with complying with the requirements set forth in the agreement. It is for this reason that we are writing to express opposition to the proposed LSAA fee increase.

We appreciated the opportunity to meet with the Department to discuss this proposal. The discussion with Department staff was helpful in providing an opportunity to better understand the Department's needs associated with its management of the LSAA program. However, we remain concerned with the increased fees proposed, despite the opportunity to discuss the proposal, and would like to outline a number of issues the Department should address prior to adopting any revisions to the fee schedule.

Farmers and ranchers in California face numerous costs and fees associated with doing business in the state. The Department's Initial Statement of Reasons states that "the new fees are not significant compared to permit fees charged by other state governmental agencies." While the statement is correct that LSAA fees are less than those charged for many of the programs managed by the State Water Resources Control Board (SWRCB), it does not mean that the

- a, cont. LSAA fee increase is insignificant. Further, it is inappropriate to consider the LSAA fee increases in a vacuum, as the applicants are required to pay fees and comply with numerous other regulatory programs in California.

For example, an average 500-acre orchard in California would be expected to pay nearly \$3,000 in annual fees to comply with water rights fees and the Irrigated Lands Regulatory Program at the SWRCB. These fees do not cover any of the associated compliance costs with either program. These programs have also seen regular fee increases. Specifically, fees required for water rights have increased 173 percent since 2009.

A 129 percent increase in fees for a LSAA is not insignificant and should not be treated as such. It is particularly concerning to see the Department, in its Economic Impact Statement, state that the regulation will have no effect on the ability of California businesses to compete with other states by making it more costly to produce goods or services here. It seems challenging to make a case that increasing a fee for a program to which most farmers and ranchers outside of California are not subject wouldn't affect their ability to compete. The buyers of farm products – big box and traditional grocery chains, restaurant chains – set the price they will pay farmers. If California farmers cannot meet the stated price, the buyers can and do purchase from farmers in other states and countries. Any cost increases affect farmers' ability to meet buyer set prices.

- b We are particularly concerned with the timing of this fee increase. At the same time the fee increase is proposed, the administration is proposing to subject LSAA fees to the annual increase set forth in Fish and Game Code Section 713. Significantly increasing the fee right before subjecting fee payers to regular, annual increases will make the increase even more burdensome over time through the compounding effect of the annual increase.
- c In addition to our concerns regarding the timing of the fee increase, we are concerned that the proposed fee increase goes against the legislative intent of AB 243 (Wood – 2015). The package of bills that created a framework for regulating medical marijuana included a provision requiring the Department “to enhance fees on any entity subject to Section 1602 for marijuana cultivation sites that require remediation¹.” This language appeared to require the Department to increase fees for all 1602 applicants to cover the costs of remediating marijuana cultivation sites. Assemblymember Wood stated this was not the intent of the language and submitted a letter to the Assembly Daily Journal on September 11, 2015.

The letter stated in part, “I plan to introduce cleanup legislation in the 2016 Legislative Session to ... clarify in Section 12029 (d) of the Fish and Game Code that fees shall only be assessed on cannabis cultivation sites and not on all entities, which was inadvertently kept in AB 243 (2015).” This clarifying language was introduced, and remains in, AB 1575 (Bonta), which is currently moving through the legislative process. It is concerning that after the legislature made its intent clear, the Department raised fees for all entities subject to Fish and Game Code Section 1602. This action appears, to those outside the Department, to subject all fee payers to the increase that was supposed to be limited to marijuana cultivators.

¹ Fish and Game Code Section 12029 (d)

- d We also question the Department's perceived staffing needs to operate the program. In the Fiscal Analysis for FYs 2010-2014 dated December 2015 (Fiscal Analysis), the Department stated that it developed a new fee schedule in November 2005 with the intention that the staffing level would have the capacity to review 50 percent of the Notifications. When the fees were being discussed in 2005, we appreciated the Department's recognition of its authority to utilize the operation of law provision provided in Fish and Game Code Section 1602(a)(4)(D) and build efficiencies into the LSAA program by focusing limited resources on those Notifications that had the greatest threat to resources.

Given the goal of reviewing 50 percent of Notifications in 2005, the fact that not increasing fees would lead to an inability to review 51 percent of Notifications² raises questions. Why is the Department so significantly reducing its utilization of the "on-law" provision in the code? More importantly, why isn't there a more thorough discussion of the staffing goals and the impact those goals have on fee increases? It seems challenging to justify a 129 percent fee increase if keeping the fees static would keep the program at its original review goal set in 2005.

We appreciate the Department providing an overview of the fiscal status of the LSAA program budget in its Fiscal Analysis. This document provided valuable information regarding the status of the fund. It also raised questions about the need for the fee increase. The Fiscal Analysis mentioned that revenues "have not fully recovered from the 2007 economic downturn." This statement raises a significant question regarding the necessity of the fee increase. It appears that the decline in the fund balance stems from the decline in revenues when fewer Notifications were submitted to the Department. One could conclude that the fees are being increased to address the overstaffing of the program during the economic downturn. The Department should have reduced the staff managing the LSAA program when Notifications declined, rather than maintaining the size of the program. Had this occurred, there would not have been a significant decline in the fund balance, and a fee increase as significant as is being proposed currently would not likely have been necessary.

- e Additionally, the Department justifies the need for the fee increase by discussing the decline in revenues from Notifications submitted as part of a Timber Harvest Plan. While it is correct that the Department does not receive those revenues, instead it receives funds from the Timber Regulation and Forest Restoration Fund pursuant to Public Resources Code Section 4629.6(c) and these fees pay for the staff necessary to review LSAA Notifications submitted by timber operators. The loss of fees associated with review of timber plans should not have any impact on the overall fund condition.
- f We believe that the Department could and should design practices that landowners can utilize to best implement their projects or activities. For example, there are standards for road building and maintenance and culvert installation and maintenance. The Department could define in an agreement those practices a landowner should use when installing or maintaining culverts and roads. Once the Department creates an agreed upon template for these practices, there is no need to design a new protocol for each practice, rather, be creative and define methods for working through instances where those practices would need to be different for a specific site. Once the

² Discussed in the Initial Statement of Reasons on Page 11

f, cont. Department develops that methodology, then implementation of the program becomes more efficient and cost effective.

This concept is very similar to what was provided to marijuana cultivators in this year's budget trailer bill (SB 837). We believe creating a general agreement for activities would provide significant efficiencies to the program and would urge the Department to consider adopting that model beyond marijuana cultivators.

We appreciate the opportunity to comment on this significant proposal and would request serious consideration of the issues raised herein. We look forward to an opportunity to further discuss options to improve efficiencies of the LSAA program. Should you have any questions or need further information, please contact me by phone (916/446-4647) or email (ncremers@cbbf.com).

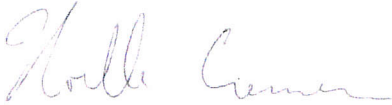
Sincerely,



Justin Oldfield
California Cattlemen's Association



Valerie Nera
California Chamber of Commerce



Noelle G. Cremers
California Farm Bureau Federation



Erica Sanko
California Wool Growers Association



Gail Delihant
Western Growers

CC: Mr. Chuck Bonham, Director, Department of Fish and Wildlife
Mr. Richard Macedo, Chief, Habitat Conservation Planning Branch



Mendocino County Farm Bureau

303-C Talmage Road • Ukiah, CA. 95482 • (707) 462-6664 • Fax (707) 462-6681 • Email: mendofb@pacific.net

Affiliated with the California Farm Bureau Federation and the American Farm Bureau Federation

June 24, 2016

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
Sent Via Email: lance.salisbury@wildlife.ca.gov

RE: Amend Section 699.5 Title 14, California Code of Regulations Lake and Streambed Alteration Agreements and Affiliated Addendum Documents.

Dear Mr. Salisbury,

The Mendocino County Farm Bureau (MCFB) is a non-governmental, non-profit, voluntary membership, advocacy group whose purpose is to protect and promote agricultural interests throughout the county and to find solutions to the problems facing agricultural businesses and the rural community. MCFB currently represents approximately 1200 members. MCFB would like to provide comments and opposition to the proposed fee increases related to Department of Fish and Wildlife (Department) lake and streambed alteration agreements (LSA).

MCFB is highly concerned that the Department is proposing a 129% fee increase for LSAs under the premise of increasing revenue to pay the total incurred costs to administer the LSA program. In the initial statement of reasons document, it is stated that revenues for the LSA program have decreased 17% since 2006 while expenditures increased 13% since FY 2010-11. LSA fees were adjusted 12% in 2010 and an additional 9.5% in 2014. MCFB questions the need to increase the fee schedule for FY 2016-17 by 129% if the Department has been aware of the shortfalls of the LSA program since 2006 and significantly smaller fee increases were proposed in 2010 and 2014.

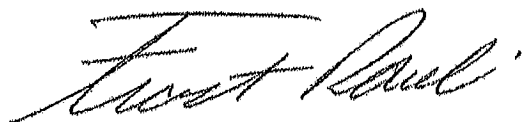
- b In the statement of reasons document, the four approaches to the funding shortfalls, related to the LSA program were listed as:
1. Increase fees 278% to approach total cost of a complete LSA Program (i.e., the processing of all notifications to agreements plus compliance monitoring and enforcement) (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.

A sudden 129% single increase in LSA fees is significant and although the 129% was not the largest fee schedule increase option considered by the Department, there did not seem to be sufficient discussion of any proposed increase below 129% considered. The proposal to increase fees by 129% (Option 3 above) was listed as the most effective option for regulation implementation purposes and less burdensome and cost effective for LSA applicants. Option 4 listed above describes increasing efficiency or fee schedule increases less than 129%. There was no expanded discussion of Option 4 in the statement of reasons document, just additional discussion of a no action alternative. MCFB feels that improved efficiency

- b, cont. within the existing LSA program would be more beneficial than simply increasing the fee schedule by 129% this year with additional increases in the future and requests the Department to look at ways to increase efficiency within the LSA program prior to simply increasing fee schedules.
- c One of the justifications for increasing the LSA program fees by 129% is that the Department is anticipating an increased work load related to remediating marijuana cultivation. A new fee category (\$3000 under 1000 ft² or \$5000 over 1000 ft²) is proposed for marijuana cultivation site remediation that will be added to the payments required for a standard agreement through the LSA program. In the initial statement of reasons it is discussed that the Department cannot fully anticipate the level of funding that will be brought into the LSA program from the new marijuana remediation fee, however there was an estimate of \$900,000 based on 2015 inspections. In the June 7th addendum to the statement of reasons, it is stated that the estimated annual fee revenues for remediation of marijuana cultivation sites would range from \$1.8 million to \$4.5 million depending on the actual number of sites covered and the respective area (square-feet per site) requiring remediation. In addition, Table 2 on page 2 of the revised STD399 worksheet shows higher revenues than expenses for projections related to the LSA program between 2016-2019 without revenue from marijuana remediation fees being considered. MCFB does not agree that all LSA applicants should be forced to pay a fee increase of 129% in order for the Department to make up costs specifically related to administering LSA permits or remediating issues affiliated with marijuana cultivation. The separate fee category for marijuana cultivation should be sufficient to offset costs related to LSA permits for marijuana cultivators and therefore a standard LSA agreement fee increase of less than 129% should be proposed.
- d MCFB is also concerned that the proposed LSA fee increase goes against the legislative intent of AB 243 that was authored by Assemblyman Jim Wood who represents Mendocino County. Assemblyman Wood stated that it was not the intent of the language of AB 243 to require the Department to increase fees for all 1602 applicants to cover the expenses related to the costs of remediating marijuana cultivation sites and he submitted a letter to the Assembly Daily Journal on September 11, 2015 to explain this. The letter stated in part "I plan to introduce cleanup legislation in the 2016 Legislative Session to clarify in Section 12029 (d) of the Fish and Game Code that fees shall only be assessed on cannabis cultivation sites and not on all entities, which was inadvertently kept in AB 243 (2015)." This clarifying language was introduced, and remains in AB 1575 (Bonta), which is currently moving through the legislative process. MCFB feels that the language in the proposed amendments to the LSA program and affiliated increased fee schedule subjects all LSA fee payers to the increase that was supposed to be limited by the intent of the afore mentioned legislation to marijuana cultivators.
- e In addition, the statement of reasons document states that, "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." MCFB disagrees with this statement since most of our members who are required to apply for a LSA permit are not proposing any form of project. They are mandated to have a LSA permit simply to place a diversion line or relocate a pump on a railing system to be able to utilize an existing water right. The cost of the actual project was incurred already, so the additional 129% fee increase simply to apply for an ongoing LSA permit is significant.

MCFB appreciates the opportunity to submit comments on the proposed amendments to Section 699.5 Title 14, California Code of Regulations Lake and Streambed Alteration Agreements and the affiliated addendum documents. MCFB encourages the Department to consider the points raised in this letter and not adopt a 129% fee increase for the LSA program.

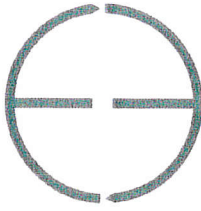
Sincerely,

A handwritten signature in cursive script, appearing to read "Frost Pauli".

Frost Pauli
President

CC:

Assemblyman Jim Wood
Senator Mike McGuire



California Council for Environmental and Economic Balance

101 Mission Street, Suite 1440, San Francisco, California 94105
415-512-7890 phone, 415-512-7897 fax, www.cceeb.org

June 29, 2016

California Department of Fish and Wildlife
Lake and Streambed Alteration Program
Attn: Lance Salisbury, Senior Environmental Scientist
1416 9th Street, 12th Floor
Sacramento, CA 95814
Fax: (916) 653-2588
Email: Lance.Salisbury@wildlife.ca.gov

Re: Fees for Lake and Streambed Alteration Agreements

Dear Mr. Salisbury:

The California Council for Environmental and Economic Balance (CCEEB) appreciates the opportunity to comment on the Department of Fish and Wildlife's (Department) proposed fee increase for Lake and Streambed Alteration Agreements (LSAA). CCEEB is a coalition of business, labor, and public leaders that works together to advance strategies to achieve a sound economy and a healthy environment. Founded in 1973, CCEEB is a non-profit and non-partisan organization.

- a Many of CCEEB's members are required to notify the Department of activities they are undertaking in the bed, bank, or channel of a lake or stream. This process is costly both through the fees assessed and the costs associated with complying with the requirements set forth in the agreements.

CCEEB members face numerous costs and fees associated with doing business with the State. The Department's Initial Statement of Reasons states "the new fees are not significant compared to permit fees charged by other state governmental agencies." While the statement is correct that LSAA fees are less than those charged for many of the programs managed by the State Water Resources Control Board (SWRCB), it does not automatically follow that the LSAA fee increase is insignificant. Further, it is inappropriate to consider the LSAA fee increases in a vacuum without considering the cumulative effect of numerous fees associated with a broad range of other regulatory programs, as the applicants are required to pay fees and comply with numerous other regulatory programs in California.

A 129 percent increase in fees for a LSAA is not insignificant and should not be treated as such. It is particularly concerning to see the Department, in its Economic Impact Statement, declare

a, cont. that the fee increase will have no effect on the ability of California businesses to compete with other states by making it more costly to produce goods or services here.

b CCEEB is particularly concerned with the timing of this fee increase. At the same time the fee increase is proposed, the administration is proposing to subject LSAA fees to the annual increase set forth in Fish and Game Code Section 713. Significantly increasing the fee at this juncture prior to subjecting fee payers to regular, annual increases will make the increase even more burdensome over time through the compounding effect of the annual increase.

c In addition, CCEEB is concerned that the proposed fee increase goes against the legislative intent of AB 243 (Wood – 2015). The package of bills that created a framework for regulating medical marijuana included a provision requiring the Department “to enhance fees on any entity subject to Section 1602 for marijuana cultivation sites that require remediation”. This language appeared to require the Department to increase fees for all 1602 applicants to cover the costs of remediating marijuana cultivation sites. Assemblymember Wood has affirmed that this was not the intent of the language in a letter submitted to the Assembly Daily Journal on September 11, 2015.

The letter stated in part, “I plan to introduce cleanup legislation in the 2016 Legislative Session to ... clarify in Section 12029 (d) of the Fish and Game Code that fees shall only be assessed on cannabis cultivation sites and not on all entities, which was inadvertently kept in AB 243 (2015).” This clarifying language was introduced, and remains in AB 1575 (Bonta), which is currently moving through the legislative process. It is concerning that after the Legislature made its intent clear, the Department raised fees for all entities subject to Fish and Game Code Section 1602. This action appears to those outside the Department that all fee payers are being subjected to the increase that was supposed to be limited to marijuana cultivators.

d We appreciate the Department providing an overview of the fiscal status of the LSAA program budget in its Fiscal Analysis. This document provided valuable information regarding the status of the fund. It also raises questions about the need for the fee increase. The Fiscal Analysis mentions that revenues “have not fully recovered from the 2007 economic downturn.” This statement raises a significant question regarding the necessity of the fee increase. It appears that the decline in the fund balance stems from the reduction in revenues when fewer Notifications were submitted to the Department. One could conclude that the fees are being increased to address the overstaffing of the program during the economic downturn. The Department should have reduced the staff managing the LSAA program when Notifications declined rather than maintaining the size of the program. Had this occurred there would not have been a significant decline in the fund balance and a fee increase as significant as is being proposed currently would not likely have been necessary.

e CCEEB believes that the Department could and should design practices that landowners can utilize to best implement their projects or activities. For example, there are standards for road building and maintenance and culvert installation and maintenance. The Department can easily

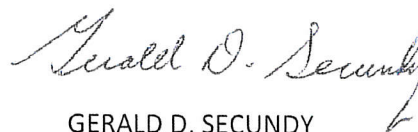
e, cont. and cost-effectively define in an agreement those practices a landowner should use when installing or maintaining culverts and roads. Once the Department creates an agreed-upon template for these practices, there is no need to design a new protocol for each practice; rather, be creative and define methods for working through instances where those practices would need to be different for a specific site. Once the Department develops that methodology then implementation of the program becomes more efficient and cost effective.

This concept is very similar to what was provided to marijuana cultivators in this year's budget trailer bill (SB 837). CCEEB believes creating a general agreement for activities would provide significant efficiencies to the program and urges the Department to consider adopting that model beyond marijuana cultivators. (See attached CCEEB letters.)

f Furthermore, it has been the recent experience of many CCEEB members that applications for LSAA's are often being delayed and that applications are being deemed incomplete at a much higher rate than previously experienced. Requests for additional information to deem applications complete more often than not have no bearing on the biological issues of concern, vary among similar projects, vary among regions, vary within a region, and cannot be accurately predicted. There are no standards to follow when submitting an application. This increases the time to process multiple versions of applications by the Department and increases the cost and time involved for those applying for LSAA's. A process should be developed by the Department that embraces standards, consistency, transparency, accountability, and cost-effectiveness.

We appreciate the opportunity to comment on this significant proposal. CCEEB looks forward to an opportunity to further discuss options to improve efficiencies of the LSAA program. Should you have any questions or need further information, please contact Jackson R. Gualco or Cliff Moriヤマ of The Gualco Group, Inc. at (916) 441-1392.

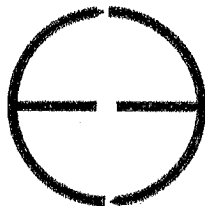
Sincerely,



GERALD D. SECUNDY
President

cc: Hon. Charlton Bonham
Mr. Kevin Hunting
Mr. William Quinn
The Gualco Group, Inc.

Attachments



California Council for Environmental and Economic Balance

101 Mission Street, Suite 1440, San Francisco, California 94105
415-512-7890 phone, 415-512-7897 fax, www.cceeb.org

June 7, 2016

The Honorable Mark Leno
Chair, Senate Budget Committee
California State Senate
P.O. Box 942848
Sacramento, CA 94248-0011

The Honorable Ricardo Lara
California State Senate
P.O. Box 942848
Sacramento, CA 94248-0033

The Honorable Lonl Hancock
California State Senate
P.O. Box 942848
Sacramento, CA 94248-0009

The Honorable Patricia Bates
California State Senate
P.O. Box 942848
Sacramento, CA 94248-0036

The Honorable Jim Nielsen
California State Senate
P.O. Box 942848
Sacramento, CA 94248-0004

RE: 2016 Medical Cannabis Trailer Bill

Dear Mr. Chair and Conferees:

The California Council for Environmental and Economic Balance (CCEEB) has reviewed the 2016 Medical Cannabis Trailer Bill (05/13/16 draft) and understands the need to adopt clarifying amendments to last year's Medical Marijuana Regulation and Safety Act.

CCEEB is a coalition of California business, labor and public leaders that works to advance strategies to achieve a sound economy and a healthy environment. Founded in 1973, CCEEB is a non-profit and non-partisan organization.

Our interest in the trailer bill is focused specifically on one issue: the addition of Fish and Game Code Section 1617 (page 26 in the 05/13/16 draft) that deals with the California Department of Fish and Wildlife ("Department") Lake and Streambed Alteration ("LSA") program. The proposed new Fish and Game Code Section 1617 would enable the Department to adopt regulations "establishing the requirements and procedure for the issuance of a general agreement in a geographic area for a category or categories of activities related to cannabis cultivation".

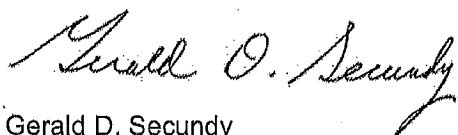
We believe that a regulation that enumerates a general agreement for categories of activities should not be limited to just the cultivation of cannabis. Routine maintenance and operational activities carried out by industries and public agencies that are currently required to secure

individual authorization under the LSA could benefit tremendously from the development of a general agreement. Why are routine activities by California's farms, utilities, and construction industries being excluded from this newly proposed rulemaking process? Why are categories of activities focused on the public health and safety of California communities excluded from this new process? Routine operations and maintenance activities such as pruning, trimming, clearing or removing vegetation to gain access to or clear around a facility or access road should be afforded the same exemptions as cannabis cultivators. Those kinds of activities are undertaken to maintain public safety and reliability in essential services provided by key service entities such as utilities, railroads, irrigation districts, water agencies, and other public agencies.

CCEEB believes that if the development of general agreements for categories of activities are applicable to one industry then it is only fair that other industries and entities have access to the same process. We urge you to amend proposed Fish and Game Code Section 1617 to expand the scope of the regulations to any category or categories of activities requiring an individual agreement pursuant to the LSA.

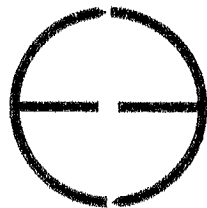
Thank you for your consideration of this modest request. Please feel free to contact Jackson R. Gualco and/or Cliff Moriyama of The Gualco Group, Inc. at (916) 441-1392 with any follow-up questions.

Sincerely,



Gerald D. Secundy
CCEEB President

cc: Honorable Budget Conferees
Honorable Fran Pavley
Honorable Jeff Stone
Honorable Marc Levine
Honorable Das Williams
Honorable Brian Jones
Honorable James Gallagher
Honorable Michael Cohen
Honorable John Laird
Honorable Karen Ross
Honorable Charlton Bonham
Ms. Martha Guzman-Aceves
Mr. Keall'i Bright
Ms. Susan LeGrande
Mr. Kip Lipper
Ms. Catherine Freeman
Ms. Dana Brennan
Ms. Rocel Bettencourt
Ms. Marie Liu
Mr. John Kennedy
Ms. Gabrielle Meindl
The Gualco Group, Inc.



California Council for Environmental and Economic Balance

101 Mission Street, Suite 1440, San Francisco, California 94105
415-512-7890 phone, 415-512-7897 fax, www.cceeb.org

June 7, 2016

The Honorable Phil Ting
Chair, Assembly Budget Committee
California State Assembly
P.O. Box 942849
Sacramento, CA 94249-0019

The Honorable Richard Bloom
California State Assembly
P.O. Box 942849
Sacramento, CA 94249-0050

The Honorable Lorena Gonzalez
California State Assembly
P.O. Box 942849
Sacramento, CA 94249-0080

The Honorable Jay Olberholte
California State Assembly
P.O. Box 942849
Sacramento, CA 94249-0033

The Honorable Kristen Olsen
California State Assembly
P.O. Box 942849
Sacramento, CA 94249-0012

RE: 2016 Medical Cannabis Trailer Bill

Dear Chair and Conferees:

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Our interest in the trailer bill is focused specifically on one issue: the addition of Fish and Game Code Section 1617 (page 26 in the 05/13/16 draft) that deals with the California Department of Fish and Wildlife ("Department") Lake and Streambed Alteration ("LSA") program. The proposed new Fish and Game Code Section 1617 would enable the Department to adopt regulations "establishing the requirements and procedure for the issuance of a general agreement in a geographic area for a category or categories of activities related to cannabis cultivation".

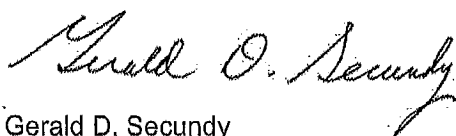
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individual authorization under the LSA could benefit tremendously from the development of a general agreement. Why are routine activities by California's farms, utilities, and construction industries being excluded from this newly proposed rulemaking process? Why are categories of activities focused on the public health and safety of California communities excluded from this new process? Routine operations and maintenance activities such as pruning, trimming, clearing or removing vegetation to gain access to or clear around a facility or access road should be afforded the same exemptions as cannabis cultivators. Those kinds of activities are undertaken to maintain public safety and reliability in essential services provided by key entities such as utilities, railroads, irrigation districts, water agencies, and other public agencies.

CCEEB believes that if the development of general agreements for categories of activities are applicable to one industry then it is only fair that other industries and entities have access to the same process. We urge you to amend proposed Fish and Game Code Section 1617 to expand the scope of the regulations to any category or categories of activities requiring an individual agreement pursuant to the LSA.

Thank you for your consideration of this modest request. Please feel free to contact Jackson R. Gualco and/or Cliff Moriyama of The Gualco Group, Inc. at (916) 441-1392 with any follow-up questions.

Sincerely,



Gerald D. Secundy
CCEEB President

cc: Honorable Budget Conferees
Honorable Fran Pavley
Honorable Jeff Stone
Honorable Marc Levine
Honorable Das Williams
Honorable Brian Jones
Honorable James Gallagher
Honorable Michael Cohen
Honorable John Laird
Honorable Karen Ross
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Ms. Catherine Freeman
Ms. Dana Brennan
Ms. Rocel Bettencourt
Ms. Marie Liu
Mr. John Kennedy
Ms. Gabrielle Meindl
The Gualco Group, Inc.

June 29, 2016

California Department of Fish and Wildlife
Lake and Streambed Alteration Program
Attn: Lance Salisbury, Senior Environmental Scientist
1416 9th Street, 12th Floor
Sacramento, CA 95814
Email: Lance.Salisbury@wildlife.ca.gov

RE: 15 Day Notice for Addendum to Notice of Proposed Rulemaking: Lake and Streambed Alteration Agreements (Section 699.5, Title 14, CCR), OAL File Number Z-2016-0419-08

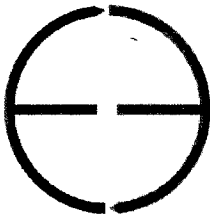
- a We appreciate the opportunity to comment on the aforementioned addendum related to marijuana cultivation sites. Sustainable Conservation supports the California Department of Fish and Wildlife's (CDFW) effort to collect fees and increase enforcement staff to help remediate and restore habitat impacted by illegal marijuana cultivation activities.
- b The State Water Resources Control Board (SWRCB) has identified approximately 50,000 marijuana cultivation sites in California. A subset of those sites inspected by CDFW's Watershed Enforcement Team showed that approximately 90% of those sites were in violation of the Fish and Game Code (FGC), and of those in violation, a further 90% required remediation. These cultivation sites often cause severe environmental impacts, including increased sedimentation and decreased stream flows that can negatively impact habitat and greatly exacerbate our current drought conditions. These operations also introduce pesticides and other chemicals into the environment that can cause harm to fish and wildlife. In addition, several major waterbodies home to severely endangered Coho salmon are at or near historically low water levels, due in part to illegal water diversions from cultivation sites.
- c Remediation and habitat restoration/enhancement projects must be implemented at an accelerated rate to help offset the severe impacts from the growing number of cultivation operations throughout the state. The Department's new Habitat Restoration and Enhancement (HRE) Act Program was created to help encourage and speed up implementation of badly needed restoration projects statewide and will be a key tool to help further voluntary restoration efforts. However, in order to adequately address the severity of
- d the problem with illegal cultivation, Sustainable Conservation also encourages the Department to conduct greater enforcement under the existing legal authorities of the Fish and Game Code and other relevant laws, and to utilize the funds generated from enforcement penalties for needed remediation and restoration within the counties they were received. While we realize the Department has conducted some enforcement efforts with its limited available staff, we wholeheartedly support staff increases to get this important work done and to deter future illegal and environmentally detrimental activity.

Thank you for consideration and efforts to protect and restore California's resources.

Sincerely,



Erika Lovejoy, Associate Director of Restoration
Sustainable Conservation
98 Battery St, Suite 302
San Francisco, CA 94111
elovejoy@suscon.org / ph. 415.977.0380 x304

**California Council for Environmental and Economic Balance**

101 Mission Street, Suite 1440, San Francisco, California 94105
415-512-7890 phone, 415-512-7897 fax, www.cceeb.org

July 12, 2016

The Honorable Charlton H. Bonham
Director
Department of Fish and Wildlife
1416 Ninth Street, Twelfth Floor
Sacramento, CA 95814

Re: Proposed Fees for Lake and Streambed Alteration Agreements

Dear Director Bonham:

Thank you for taking the time to write me a response to our recent submittal on the subject of a proposed fee schedule related to lake and streambed alteration agreements. CCEEB values its relationship with you and the department and is greatly appreciative of your willingness to provide clarification as to the intended universe of fee payers.

- a As you outlined in your letter to me of June 30, 2016, the department intends to amend the pending fee proposal as follows:

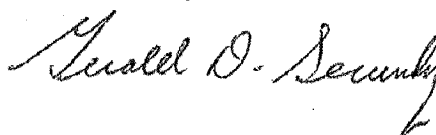
(B) The additional fees specified in subsection (i)(2)(A) and (B) shall apply only to entities notifying the department for remediation associated with marijuana cultivation site, and in no other circumstance.

CCEEB is pleased to support this clarifying amendment.

On a separate but related note (and something that we briefly broached with Chief Deputy Director Kevin Hunting in our recent meeting) we would like to initiate discussions on how general LSA agreements might be fashioned to cover routine activities to maintain utility, including railroad, properties and rights-of-way. If you are amenable, we will be in touch to get a kickoff conversation scheduled.

Thank you for your continued consideration of CCEEB's perspective on the important issues facing the department and the regulated community.

Sincerely,

A handwritten signature in cursive script that reads "Gerald D. Secundy". The signature is written in dark ink and is positioned above the printed name and title.

GERALD D. SECUNDY
President

cc: Mr. Kevin Hunting
Mr. Lance Salisbury
Mr. Bill Quinn
The Gualco Group, Inc.

ATTACHMENT B

RESPONSES TO PUBLIC COMMENTS

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

The Department of Fish and Wildlife's (Department) responses to all written comments on the proposed rulemaking received during the 45-day comment period and the testimony received during the public hearing, all written comments on the addendum to the Initial Statement of Reasons received during the first 15-day continuation of the comment period, and all written comments on the change the Department made to the regulatory text received during the second 15-day continuation of the comment period are below.

45-Day Comment Period: Proposed Rulemaking

1. Kevin Gaston, May 2, 2016 (email)

- a) Asked if the existing regulations or the proposed regulations allow for a fee waiver for work that involves ecological restoration.

Department response: Neither the existing nor proposed regulations allow for a fee waiver for work that involves ecological restoration. The primary purpose of the proposed rulemaking is to generate near term revenues to maintain the Department's Lake and Streambed Alteration (LSA) Program at its current level of service by increasing the fees in the existing fee schedule for lake and streambed alteration agreements (existing fee schedule) in accordance with Fish and Game Code (FGC) Section 1609. Section 1609 requires the Department to establish a schedule of fees in an amount necessary to pay the total costs the Department incurs to administer and enforce FGC Section 1600 *et seq.* Although FGC Section 1609 does not prohibit the Department from waiving fees, the Department incurs costs to process a notification and issue a lake or streambed alteration agreement regardless of the type or purpose of the project, including a project for ecological restoration.

2. Richard Boyd, May 14, 2016 (email)

- a) Asked if the Department has been in contact with the Howard Jarvis Tax Association and the Board of Equalization.

Department response: The Department has not contacted the Howard Jarvis Tax Association or the Board of Equalization regarding the proposed rulemaking. The Department noticed and received comments on the proposed rulemaking in accordance with the Administrative Procedure Act (APA), specifically Government Code Sections 11346.4, 11346.45, 11346.5, and 11346.8. The Department did

not receive any comments from the Howard Jarvis Tax Association or the Board of Equalization regarding the proposed rulemaking.

- b) The increase in fees seems to be based on fee for service and not a tax.

Department response: Just like the fees in the existing fee schedule, the increase to the fees in the proposed rulemaking is not a tax. The Department is not entirely clear about what the commenter means by “fee for service.” The Department would describe the fees as regulatory fees necessary to carry out and enforce FGC Section 1600 et seq., as FGC Section 1609 provides.

- c) Will fees be collected by other agencies?

Department Response: Any entity that notifies the Department must pay the applicable fee in the fee schedule directly to the Department when the entity submits the notification. Therefore the Department alone is responsible for collecting these fees.

3. Natalynne DeLapp, Environmental Protection Information Center (EPIC), May 25, 2016 (letter)

- a) Supports the proposed amendments to adjust the fees in order to pay for the total costs of the LSA Program.

Department response: The Department appreciates EPIC’s support for the Department’s proposal to increase the fees in the existing fee schedule in the proposed rulemaking. The Department agrees that increasing the fees in the existing fee schedule is necessary to maintain the LSA Program at its current level of service.

- b) Supports having entities that must remediate a marijuana cultivation site pay an additional fee. Marijuana sites adversely affect water quality and should bear additional costs for remediation.

Department response: The comment is consistent with FGC Section 12029(a)(1) in which the Legislature concluded: “The environmental impacts associated with marijuana cultivation have increased and unlawful water diversions for marijuana irrigation have a detrimental effect on fish and wildlife and their habitat...” It is also consistent with FGC Section 12029(a)(2), which reads: “The remediation of existing marijuana cultivation sites is often complex and the permitting of these sites requires greater department staff time and personnel expenditures.” Based in part on these findings, the Legislature authorized the Department to “adopt regulations to enhance the fees on any entity subject to [FGC] Section 1602 for cannabis cultivation sites that require remediation.” Pursuant to this authority, the Department is adding to the existing fee schedule a new fee category for marijuana sites that require remediation, as explained in the Initial Statement of Reasons (ISOR) (see ISOR, pp. 15-16).

4. Staci Heaton, Rural County Representatives of California and California State Association of Counties, June 9, 2016 (letter)

- a) The proposed fee increase is excessive, particularly because most of the increases in the Department's expenses appear to be due to staffing, salary, and benefit increases.

Department response: Section 1609 requires the Department to establish a schedule of fees in an amount necessary to pay the total costs the Department incurs to administer and enforce FGC Section 1600 *et seq.* As the Department explained in the ISOR, "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." (ISOR, p. 4.) The budget shortfall is due to the fact that LSA Program expenditures have increased while LSA Program revenues have been about the same. As the commenter notes correctly, the increase in LSA Program expenditures is largely related to increased staff benefit rates, salary adjustments, and administrative costs over the past five years. The Department does not control these costs. Staff benefit rates and salary adjustments are made during employee bargaining unit negotiations with CalHR. Operating budgets for scientific staff were reduced from \$10K to \$6K during this same time period. (See Lake and Streambed Alteration Program, Fiscal Analysis for FYs 2010-2014, December 2015, p. 3.)

As the Department also explained in the ISOR, the primary purpose of the proposed rulemaking is to generate near term revenues to maintain the Department's LSA Program at its *current* level of service. Indeed, the Department considered and rejected two alternatives that would have increased fees substantially more than the Department is proposing as part of this rulemaking, even though doing so would have allowed the Department "to approach [the] total cost of a complete [LSA] Program" or "to cover the actual cost of the [program]." (See ISOR, Section IV.a, c, p. 10, pp. 11-12.) The proposed rulemaking is a less burdensome alternative to members of the regulated community compared to the two alternatives the Department rejected. In sum, if the Department does not adjust the fees as proposed, the Department will lose positions and not be able to meet its statutory mandate (under FGC Section 1609) by maintaining the existing level of service under the LSA Program to process notifications and issue agreements. See also, Department Response 4.b.

- b) The proposed fee increase is significant, particularly for many counties that have among the highest unemployment rates and lowest countywide median household incomes in the State, and particularly when the Department is proposing to begin charging fees for permits under the California Endangered Species Act (CESA).

Department response: See Department Response 4.a. Further, only those entities that must complete a project for which notification is required under FGC Section 1602 must pay the applicable fee in the fee schedule. Similarly, if the Department begins charging fees for CESA permits, only those persons who need such

permits would be required to pay the applicable fee. Most projects for which notification is required do not also need a CESA permit. Finally, under the proposed fee increase, the fee for the most common agreement the Department issues, a five year standard agreement with a project cost of less than \$5,000, would increase from \$245 to \$561, or \$112 a year over five years. The fee for the most expensive standard agreement would increase from \$4,912.25 to \$5,000, or \$17.55 a year over five years.

- c) Recommends that the Department extend the public process on the proposed rulemaking and work with affected stakeholders to explore other options to make the agreement process more efficient rather than increase fees.

Department response: See Department Responses 4.a and 4.b regarding the present need to increase the fees in the existing fee schedule. The Department is continuing its work to enhance the LSA Program and to make it more efficient. For example, over the last number of years, the Department has completed the following tasks: (1) standardized forms, instructions, and other LSA Program documents; (2) analyzed and improved administrative procedures; (3) trained staff in a number of disciplines; (4) prioritized and promoted program consistency; (5) enhanced its tracking system for notifications and agreements to better monitor compliance; and (6) provided the public access to Department resources, forms, and information on the LSA Program, including guidance on how to prepare notifications, on the LSA Program's webpage.

When the Department is unable to issue a draft agreement within 60 days of receiving a complete notification (for a five year agreement), the entity may proceed with the project without an agreement by "operation of law." The fact that the LSA Program has become more efficient is evidenced by the reduction in its "operation of law" rate, while operating at roughly the same staffing levels. In 2005, the Department had an "operation of law" rate of approximately 50%. In 2015, the rate was reduced to a statewide average of 14%, even though the number of notifications each year (2,400 on average) and the staffing levels were about the same. The lower "operation of law" rate has been better for entities, as well as fish and wildlife resources, because more projects being completed are subject to the protective measures in agreements.

Finally, when considering program efficiencies, it is important to take into account that the Department has six regional offices that implement the LSA Program throughout the State, and that site visits are often necessary to assess the project and site specific conditions in order to prepare an agreement. Travel to and from project sites comprise approximately 25% of program staff time and associated costs necessary to process a notification and prepare an agreement.

- d) Supports adding a new fee category to the existing fee schedule for marijuana cultivation sites that require.

Department response: See Department Response 3.b.

Public Hearing

5. Noelle C. Cremers, California Farm Bureau Federation, June 13, 2016 (testimony).

- a) Asked for clarification regarding the changes resulting from the 2013 "timber tax."

Department response: Pursuant to Public Resources Code Section 4629.6(c), the Department may not collect fees for notifications for timber operations that were received on or after July 1, 2013. The existing fee schedule reflects this change. Specifically, Section 699.5(d), Title 14, CCR, which applies to agreements for timber harvesting, currently reads, "Pursuant to Public Resources Code section 4629.6, subdivision (c), no fee shall be required if the Department received the notification after July 1, 2013." Under the proposed rulemaking, this language would be modified by changing "Public Resources Code section 4629.6, subdivision (c)" to "subdivision (c) of Public Resources Code section 4629.6." In sum, the proposed rulemaking will not affect existing law or Department regulations as they pertain to fees for lake or streambed alterations for timber operations.

Costs the Department incurs to process notifications and issue agreements for projects on commercial timberlands were properly not included in the proposed fee calculation because this work is no longer funded by fees in the fee schedule. Instead, the work is funded by assessments on the purchase of lumber and engineered wood products, as set forth in Public Resources Code Sections 4629.5, 4629.6, and 4629.8.

- b) The 129% increase in fees is significant for our members.

Department response: See Department Responses 4.a and 4.b.

- c) The fees should not be looked at in isolation. In combination with State Water Board and CEQA fees, they are substantial.

Department response: See Department Responses 4.a, 4.b, and 7.b. Further, each governmental agency must pay or be reimbursed for the total costs *it* incurs to administer and enforce regulatory permitting programs pursuant to separate statutory authority applicable to the agency. The Department established the fee schedule to pay the total costs it incurs to administer and enforce Fish and Game Code section 1600 *et seq.*, in accordance with FGC Section 1609. The purpose of adjusting the fees is to ensure that these costs are being met. While the Department understands that an entity might need to pay other fees to the Department or other regulatory agencies for the same project, the Department must look at the fees the Department needs to maintain the LSA Program alone because except for the assessment on lumber and wood products described in the Department Response 5.a, these fees are the LSA Program's only source of revenue. It is also the case that the Department has no control over permit fees other regulatory agencies might charge. Further, as the Department explained in the ISOR, the proposed fee increases are not significant compared to permit fees

charged by other state governmental agencies, including fees charged by the State Water Resources Control Board for water right permits. (See ISOR, p. 12.)

- d) The Farm Bureau Federation is willing to sit down with the Department to look at improving Program efficiencies.

Department response: The Department appreciates this offer and is willing to explore ideas to make the LSA Program more efficient. Also, see Department Response 4.c.

First 15-Day Continuation: Addendum to Initial Statement of Reasons and Economic Impact Assessment (STD. 399) Regarding Revenues from Fees for Marijuana Cultivation Sites That Require Remediation

6. California Farm Bureau Federation, California Chamber of Commerce, Western Growers, California Cattlemen's Association, and California Wool Growers Association, June 24, 2016 (letter)

The Department notes that except perhaps for comment "c," the comments made in this letter are not limited to the changes made to the ISOR and Economic Impact Assessment for which the Department extended the comment period, but instead address other aspects of the proposed rulemaking. Nonetheless, the Department addresses each comment below.

- a) Statement that the cost of complying with FGC Section 1602 is costly both through the fees an entity must pay and the costs associated with complying with the requirements in agreements. Opposes the fee increases in the proposed rulemaking as to costly for the State's farmers and ranchers, and disagrees that they are not significant, especially given the other fees ranchers and farmers must pay to other State agencies to comply with their regulatory programs

Department Response: See Department Responses 4.a and 4.b. Also, as the Department explained in the ISOR, "only those businesses and entities that need to obtain [an agreement] from the Department...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." (ISOR, p. 13.)

- b) Statement concerning the timing of the fee increase, explaining, "At the same time the Department is proposing to increase fees in the fee schedule, the administration is proposing to subject LSAA fees to the annual increase set forth in [FGC] Section 713. Significantly increasing the fee right before subjecting fee payers to regular, annual increases [under FGC Section 713] will make the increase even more burdensome over time and compounding the effect of the annual increase."

Department response: Under existing law, FGC Section 1609, "the [D]epartment may adjust the fees pursuant to Section 713." (Emphasis added.) FGC Section

713(b) requires the Department to adjust fees for using the Implicit Price Deflator Index for State and Local Government Purchases of Good and Service on an annual basis for each permit and any other entitlement the Department issues. (For brevity, the Department described this in the ISOR as adjusting for inflation, and does so hereafter for the same reason.) Because FGC Section 1609 does not require the Department to adjust the fees in the fee schedule pursuant to FGC Section 713 (the Department *may* adjust the fees), the Department has had to do so by completing a formal rulemaking under the APA, even though FGC Section 713(b) *requires* the Department to adjust these and other fees for inflation.

Legislation has been introduced to change “may” to “shall” in FGC Section 1609. If the legislation is enacted, the Department could adjust fees in the fee schedule for inflation without the need to complete a formal rulemaking. Completing such a rulemaking is not meaningful because under FGC Section 713(b), the Department must adjust the fees for inflation. The rulemaking is also very time-consuming, requiring the Department to dedicate a significant number of staff hours to prepare and review a rulemaking package and comply with the APA. As a result, the legislation would both resolve this inconsistency and increase program efficiency, which the Department and commenter support.

As the above makes clear, the purpose of the legislation the commenter is referring to is *not* to subject the fees in the fee schedule to the annual increases for inflation set forth in FGC Section 713(b). The fees are already subject to these increases under existing law. The legislation would simply make it easier for the Department to adjust the fees for inflation under FGC Section 1609, as FGC Section 713(b) now requires. Further, annual increases in fees for inflation will be relatively small. For example, if the Department were to increase the fees for inflation since the last adjustment in 2014, the fees would increase only 5.36%.

- c) Concern that the Department is applying FGC Section 12029(d), which was added by AB 243 (Wood - 2015), to raise fees on all entities, rather than *only* those entities that must notify the Department and if necessary, obtain an agreement to remediate a marijuana cultivation site.

FGC Section 12029(d) provides: “In order to facilitate the remediation and permitting of cannabis cultivation sites, the department may adopt regulations to enhance the fees on any entity subject to Section 1602 for cannabis cultivation sites that require remediation. The fee schedule established pursuant to this subdivision shall not exceed the fee limits in Section 1609.” As the Department explained in the ISOR, in order to implement this provision, the Department would add a new fee category to the fee schedule, Section 699.5(i), as part of the proposed rulemaking.

This commenter and other members of the regulated community raised the concern that the Department is applying FGC Section 12029(d) to raise fees on all entities, rather than *only* those entities that must notify the Department and if necessary, obtain an agreement to remediate a marijuana cultivation site. The Department explained in the ISOR that this rulemaking would: 1) increase all

fees in the existing fee schedule to generate near term revenues to maintain the *current* LSA Program at its current level, pursuant to its authority under FGC Sections 1609 and 713(g), and not FGC Section 12029(d), and 2) separately, would establish *for the first time* an additional fee for any entity that must notify the Department to remediate a marijuana cultivate on site, pursuant to FGC Section 12029(d). (See ISOR, p. 1, pp. 2-4.) Further, the structure of the fee schedule indicates (e.g., separate fee categories) and text provides (Section 699.5(i)(1)) that an entity would only need to pay the additional fee in Section 699.5(i) if the entity were to notify the Department to remediate a marijuana cultivation site.

Notwithstanding the above, on June 30, 2016, the Department modified the proposed regulatory text submitted with the original Notice of Proposed Action. New subsection 699.5(i)(3)(B) in Title 14 of the California Code of Regulations (CCR) was added to make it clear that the additional fees specified in Section 699.5(i)(2)(A) and (B) apply *only* to entities that must notify the Department to remediate a marijuana cultivation site. The language in the new subsection reads in its entirety:

“The additional fees specified in subsections (i)(2)(A) and (B) shall apply only to entities notifying the department for remediation associated with a marijuana cultivation site, and in no other circumstance.”

The Department also elected to send a notice of the modified regulatory text in compliance with Government Code Section 11346.8(c) and Section 44, Title 1, CCR so: 1) those members of the regulatory community that raised the concern described above would know the Department took their concern seriously and addressed it by adding the clarifying language; and 2) those members would be able to comment on the language. This is the second of two 15-day continuations of the comment period by the Department. (See Final Statement of Reasons, Section IV (Update), and the Updated Informative Digest.)

- d) Statement questioning the Department’s perceived staffing needs to operate the LSA Program.

Department response: See Department Responses 4.a, 4.b, and 4.c. As the Department explained in Department Response 4.c, the Department significantly reduced its “operation of law” rate after 2005, even though the number of notifications and staffing levels remained about the same. The purpose of the proposed rulemaking is to maintain the LSA Program at its current level of service. Therefore, the Department anticipates that its current “operation of law” rate will continue with the proposed fee increases.

The Department’s goal has been to issue agreements (i.e., to *reduce* its “operation of law” rate) to afford protection for fish and wildlife resources a project might otherwise harm. This goal is consistent with the purpose of FGC Section 1600 *et seq.* to protect and conserve the State’s fish and wildlife resources. Further, there is no statute, regulation, or any other directive that requires or

encourages the Department to maintain a program that reviews only half the notifications it receives. Also, applicants and other interested parties have indicated that such a high (i.e., 50%) "operation of law" rate is unacceptable. These parties would rather have the Department evaluate and issue agreements for their projects.

The Department analyzed different levels of staffing and the associated costs and necessary fee increases in its "Lake and Streambed Alteration Program, Fiscal Analysis for FYs 2010-2014, December 2015." This regulatory proposal simply seeks to maintain the current level of service. Further, the Department has never been staffed sufficiently to review every notification received. In addition, staffing was effectively reduced through state-mandated staff furloughs (3 days/month) during the economic downturn. The reduction in notifications during the economic downturn helped offset the number of projects that would have likely proceeded without an agreement by "operation of law."

In sum, by deciding to increase the fees by 129% to maintain the current level of service compared to more costly alternatives (see ISOR, p. 10, pp. 11-12; Department Response 7.b), the Department balanced the cost of obtaining an agreement with protecting and conserving the State's fish and wildlife resources.

- e) Statement that the loss of fees associated with review of timber plans should not have any impact on the overall fund condition of the LSA Program.

Department response: The Department agrees. See Department Response 5.a.

- f) Recommends that the Department design practices that landowners can use to best implement their projects, thereby eliminating the need to design a new protocol for each practice. This would make the LSA Program more efficient and cost effective.

Department response: The Department agrees that developing a template or general agreement that could be used by any entity for certain types of projects, rather than preparing a separate agreement on an entity-by-entity basis for similar projects would be more efficient and cost effective. However, trying to do so would take considerable time and effort, including complying with the APA and CEQA. The Department has also found that projects that appear to be similar, e.g., installing a culvert, sometimes require different protective measures due to differences in locations, species present, and other factors. Still, this year's budget trailer bill (SB 837) added a provision to the Fish and Game Code Section 1600 *et seq.*, Section 1617, that authorizes the Department to establish "a general agreement in a geographic area for a category or categories of activities related to cannabis cultivation." In sum, although developing such a "template" is beyond the scope of this rulemaking, the Department remains open to this idea.

7. Frost Pauli, Mendocino County Farm Bureau, June 24, 2016 (letter)

The Department notes that except perhaps for comments “c” and “d,” the comments made in this letter are not limited to the changes made to the ISOR and Economic Impact Assessment for which the Department extended the comment period, but instead address other aspects of the proposed rulemaking. Nonetheless, the Department addresses each comment below.

- a) Opposes the proposed fee increases and questions the need to increase the fees in the fee schedule by 129% if the Department has been aware of the shortfalls of the Program since 2006 and significantly smaller fee increases were proposed in 2010 and 2014.

Department Response: In November 2005, the Department repealed its existing fee schedule and developed a new graduated fee schedule intended to generate revenues sufficient to cover existing LSA Program costs, which at the time included 34 positions at a cost of \$3.4 million. The Department was aware at that time that the fee schedule was not enough to ensure that all notifications received would be reviewed, to conduct compliance or effectiveness monitoring, to or fully support enforcement costs. The 2007 economic downturn and subsequent increased staffing costs, neither of which were in the Department’s control, only worsened LSA Program’s fiscal shortfall. The “smaller fee increases” in 2010 and 2014 were adjustments for inflation the Department made in accordance with FGC Section 713. Also, see Department Response 4.a.

- b) Statement that a “sudden” 129% increase in fees is significant, and although this increase was not the largest the Department considered, there did not seem to be sufficient discussion of any proposed increase below 129%. Also states that improved efficiency within the existing LSA Program would be better than simply increasing the fees this year with additional increases in the future, and requests the Department to look for ways to increase efficiency.

Department Response: As the Department explained in the ISOR, it considered an alternative where the Department would 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. (ISOR, p. 10.) The Department concluded this alternative would “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 ... is to increase the fees in the existing fee schedule.” (ISOR, pp. 11-12.) Also, see Department Responses 4.a, 4.b., 4.c., and 6.d.

- c) Statement that the Department is increasing the fees in the fee schedule 129% because “the Department is anticipating an increased work load related to remediating marijuana cultivation[,] and concludes that “[t]he separate fee category for marijuana cultivation should be sufficient to offset costs related to

[agreements] for marijuana cultivators and therefore a standard ... agreement fee increase of less than 129% should be proposed.

Department response: The Department explained in the ISOR that the 129% increase in fees applies to fees in the existing fee schedule to maintain the LSA Program's current level of service. Revenue from the new fee category for marijuana sites that require remediation would be used to pay for the cost of permitting and remediating these sites, as FGC Section 12029(d) provides. As the Legislature recognized in FGC Section 12029, the Department's costs associated with this work are higher than the costs associated with permitting other projects that require a standard agreement under FGC Section 1602. Hence, the Department cannot rely on this revenue for the purpose of closing the budget shortfall in the LSA Program. Also, see Department Responses 4.a, 4.b., 4.c., and 6.d.

- d) Concern that the Department is applying FGC Section 12029(d), which was added by AB 243 (Wood - 2015), to raise fees on all entities, rather than *only* those entities that must notify the Department and if necessary, obtain an agreement to remediate a marijuana cultivation site.

Department Response: See Department Response 6.c.

- e) Disagrees that the proposed rulemaking will not result in a significant adverse economic impact on business in part because, quoting from the ISOR, "[t]he fees in the fee schedule constitute a small share of the total cost of a project." Most of the Mendocino County Farm Bureau's members who must notify the Department "are not proposing any form of project[,] [but instead are simply] plac[ing] a diversion line or relocat[ing] a pump...to utilize an existing water right. The cost of the actual project was incurred already, so the additional 129% increase simply to apply for an ongoing [agreement] is significant."

Department Response: The Department understands the commenter's concern. However, notification is required for any activity described in FGC Section 1602 unless the entity already has an agreement that covers the activity. Presuming the activities the commenter described require notification, they likely could be covered by a five-year standard agreement at the lowest fee. Also, see Department responses 4.a, 4.b., 4.c., and 6.d.

The Department also notes that while diverting water from an existing facility might not change the bed, channel, or bank of a stream, the act of diverting water (i.e., removing it from a stream) could adversely affect fish and wildlife resources by reducing stream flow. Determining the amount of water that needs to remain in a stream to protect these resources is often a complex and time consuming task.

8. Gerald D. Secundy, California Council for Environmental and Economic Balance (CCEEB), June 29, 2016 (letter with two attachments)

The Department notes that except perhaps for comment “e,” the comments made in this letter are not limited to the changes made to the ISOR and Economic Impact Assessment for which the Department extended the comment period, but instead address other aspects of the proposed rulemaking. Nonetheless, the Department addresses each comment below.

- a) Statement that the cost of complying with FGC Section 1602 is costly both through the fees an entity must pay and the costs associated with complying with the requirements in agreements. Opposes the fee increases in the proposed rulemaking as too costly and disagrees that they are not significant, especially given the other fees entities must pay to other State agencies to comply with their regulatory programs.

Department Response: See Department Responses 4.a and 4.b. Also, as the Department explained in the ISOR, “only those businesses and entities that need to obtain [an agreement] from the Department...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.” (ISOR, p. 13.)

- b) Statement concerning the timing of the fee increase, explaining, “At the same time the Department is proposing to increase fees in the fee schedule, the administration is proposing to subject LSAA fees to the annual increase set forth in [FGC] Section 713. Significantly increasing the fee right before subjecting fee payers to regular, annual increases [under FGC Section 713] will make the increase even more burdensome over time and compounding the effect of the annual increase.”

Department Response: See Department response 6.b.

- c) Concern that the Department is applying FGC Section 12029(d), which was added by AB 243 (Wood - 2015), to raise fees on all entities, rather than *only* those entities that must notify the Department and if necessary, obtain an agreement to remediate a marijuana cultivation site.

Department response: See Department response 6.c.

- d) Statement questioning the Department’s perceived staffing needs to operate the LSA Program.

Department response: See Department Responses 4.a, 4.b, 4.c., and 6.d.

- e) Recommends that the Department design practices that landowners can use to best implement their projects, thereby eliminating the need to design a new

protocol for each practice. This would make the LSA Program more efficient and cost effective.

Department response: See Department Response 6.f.

- f) Statement that the Department should consider developing a process that embraces standards, consistency, transparency, accountability, and cost-effectiveness so an entity will know the information it needs to submit for a complete notification.

Department response: The Department regrets any delays CCEEB's members may have experienced after submitting a notification. The Department has tried to address such concerns by working to enhance the LSA Program and to make it more efficient, as described in Department Response 4.c. The Department is open to any ideas your member might have to improve the LSA Program.

9. Erika Lovejoy, Sustainable Conservation, June 29, 2016 (letter)

The Department notes that except perhaps for comments "a," "b" and "d," the comments made in this letter are not limited to the changes made to the ISOR and Economic Impact Assessment for which the Department extended the comment period, but instead address other aspects of the proposed rulemaking. Nonetheless, the Department addresses each comment below.

- a) Supports the Department's efforts in the proposed rulemaking to collect fees and increase enforcement staff to help remediate and restore habitat harmed by illegal marijuana cultivation activities.

Department response: The Department appreciates Sustainable Conservation's support to add a new fee category in the fee schedule for remediation of marijuana cultivation sites.

- b) Describes the adverse environmental impacts found on marijuana cultivation sites that are not in compliance with FGC Section 1602.

Department response: The Department shares the commenter's concerns regarding these problems. Also, see Department Response 3.b.

- c) Statement that remediation and habitat restoration/enhancement projects must be implemented at an accelerated rate to offset the adverse environmental impacts from the growing number of marijuana cultivation operations throughout the State.

Department response: Comment noted.

- d) Encourages the Department to conduct greater enforcement under existing law to address the problems associated with illegal marijuana cultivation and to use the funds generated from enforcement penalties for needed remediation and restoration in the counties where they were received.

Department response: Comment noted.

Second 15-Day Continuation: Change to Regulatory Text Regarding Payment of Fees for Marijuana Cultivation Sites That Require Remediation

10. Gerald D. Secundy, California Council for Environmental and Economic Balance (CCEEB), July 12, 2016 (letter)

a) Supports the “clarifying amendment.”

Department response: The Department appreciates CCEEB’s letter supporting the change it made to the regulatory text and is available to meet with CCEEB regarding the LSA Program.