

## STAFF SUMMARY FOR JUNE 21-22, 2017

**21. EXECUTIVE SESSION**

<b>Today's Item</b>	<b>Information</b> <input type="checkbox"/>	<b>Action</b> <input checked="" type="checkbox"/>
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Announce results from Executive Session, which will include:

- (A) Pending litigation to which FGC is a party
- (B) Possible litigation involving FGC
- (C) Staffing
- (D) Deliberation on license and permit items

**Summary of Previous/Future Actions (N/A)****Background**

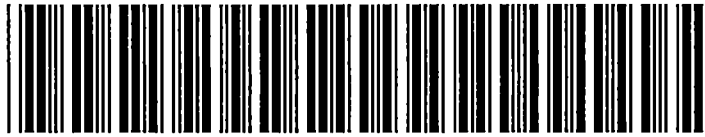
Pursuant to the authority of Government Code Section 11126(a)(1), (c)(3), and (e)(1), and Section 309 of the Fish and Game Code, FGC meets in closed executive session at each meeting. The purpose of executive session is to consider topics A-D as reflected on the meeting agenda.

- (A) See agenda for a list of civil litigation to which FGC is a party and pending at the time the agenda was posted. On May 31, 2017, the trial court overseeing the case of Sturgell v. DFW and FGC entered an order against DFW and FGC; that order is attached as Exhibit A1.
- (B) No possible litigation to report at the time the meeting binder was prepared.
- (C) Three positions are currently open: Staff services manager, associate governmental program analyst, and legal/regulatory clerk.
- (D) No license and permit items are ready for final action by FGC.

**Recommendation (N/A)****Exhibits**

- A1. [Order re Petition for Writ of Administrative Mandate in Sturgell v. California Department of Fish and Wildlife et al., filed May 31, 2017](#)

**Motion/Direction (N/A)**



**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO**

**Document Scanning Lead Sheet**

May-31-2017 4:18 pm

Case Number: CPF-14-514036

Filing Date: May-31-2017 4:18

Filed by: CYNTHIA HERBERT

Image: 05885965

ORDER

DENNIS STURGEL VS. CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE ET  
AL

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**Instructions:**

Please place this sheet on top of the document to be scanned.

1 PREPARED BY COURT  
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**FILED**  
San Francisco County Superior Court

MAY 31 2017

CLERK OF THE COURT  
By: [Signature]  
Deputy Clerk

8 SUPERIOR COURT OF CALIFORNIA  
9 COUNTY OF SAN FRANCISCO

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11 DENNIS STURGELL,

12 Petitioner,

13 v.

14 CALIFORNIA DEPARTMENT OF FISH  
15 AND WILDLIFE et al.,

16 Respondents.  
17

No. CPF-14-514036

ORDER re PETITION FOR WRIT OF  
ADMINISTRATIVE MANDATE

18  
19 The above matter came on for hearing on May 25, 2017 in Department 302 before the Honorable  
20 Stephen M. Murphy. John G. Young and E. Michael Linscheid appeared on behalf of petitioner; Jonathan  
21 Wiener and Barbara C. Spiegel appeared on behalf of respondents.

22 After reviewing the papers submitted in support of and in opposition to the petition, and hearing  
23 oral argument, the Court rules as follows:

24 This petition raises “pure issues of law [that] are subject to independent review.” (*California*  
25 *Career Schools v. Department of Motor Vehicles* (2004) 120 Cal.App.4th 10, 14; *City of Patterson v.*  
26 *Turlock Irrigation District* (2014) 227 Cal.App.4th 484, 491 (internal citation omitted) (“Issues of  
27 statutory construction, as well as the application of that construction to a particular set of facts, are  
28 questions of law subject to independent review.”)) The first issue is whether the term “land” in Fish and

1 Game Code section 8279.1 applies to the situation where a fisherman harvests crab in a legal area but  
2 offloads the crab in an area subject to the fair start delay in section 8279.1.

3 Petitioner argues that section 8279.1 is vague since it does not define "land." Petitioner points out  
4 that the legislative history shows the Legislature's concern was with the taking of crab from waters  
5 subject to the fair start provision. (Administrative Record at pp. 354, 459.) The Court agrees that "land" as  
6 used in the statute is subject to several different interpretations. In light of this ambiguity, and since  
7 violation of section 8279.1 results in mandatory forfeiture of the fisherman's Dungeness crab vessel  
8 permit, a property right, the court must strictly construe section 8279.1. (*People v. One 1986 Toyota*  
9 *Pickup* (1995) 31 Cal.App.4th 254, 261-262 [observing, "forfeitures are generally disfavored and any  
10 statute imposing a forfeiture of property must be strictly construed against the state"].)

11 Respondents argue that "land" should include crab taken legally because there could be an influx  
12 of landings in prohibited zones that could lead to long waits and wasted crab for local fishermen. But this  
13 concern is not mentioned in the legislative history. Moreover, the Department of Fish and Wildlife has not  
14 issued an interpretation that Section 8279.1 applies to the context presented here. Since the statute calls  
15 for mandatory revocation of a Dungeness crab permit and there is no evidence the statute intended to  
16 cover the situation presented here, Section 8279.1 must be read to prohibit landing crab only that were  
17 taken from ocean waters illegally.

18 The second issue concerns when a "landing" occurs. Petitioner argues that "landing" occurs either  
19 when the offloading process is completed or when a delivery receipt is issued. Respondents argue that  
20 "landing" occurs when the offloading process begins, in other words when the first crab is offloaded.

21 The evidence shows Mr. Sturgell legally took crab from Washington between January 24 and 28,  
22 2013 and began offloading that crab in Astoria, Oregon, an area subject to the fair start delay, on January  
23 29, 2013, approximately six hours before the "stand down" period ended. However, the delivery receipt  
24 was not issued until approximately 4:00 a.m. on January 30, 2013, after the "stand down" period ended.  
25 Strictly construing section 8279.1, the Court finds that petitioner's interpretation of "landing" is consistent  
26 with legislative intent such that "landing" occurred when the delivery receipt was issued.

27 Petitioner Dennis Sturgell's petition for a writ of administrative mandate is GRANTED. The  
28 Administrative Law Judge's finding that Mr. Sturgell violated section 8279.1, therefore, is not supported

1 by the evidence. The order of the Office of Administrative Hearings revoking Mr. Sturgell's California  
2 Dungeness crab permit shall be vacated and Mr. Sturgell's permit shall be reinstated.

3 The Court GRANTS respondents' request for judicial notice with regard to Exhibits D and E and  
4 DENIES respondents' request with regard to Exhibits A, B, C, F, G, H, and I.

5 IT IS SO ORDERED.

6 Dated: *May 30, 2017*

*Stephen M. Murphy*  
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8 Stephen M. Murphy  
9 Judge of the Superior Court  
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Superior Court of California  
County of San Francisco

DENNIS STURGELL,

Plaintiff,

vs.

CALIFORNIA DEPARTMENT OF  
FISH AND WILDLIFE, ET. AL.,

Defendants.

Case Number: CPF-14-514036

**CERTIFICATE OF MAILING**  
(CCP 1013a (4))

I, Cynthia Herbert, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On June 1, 2017, I served the attached Order re: Petition for Writ of Administrative Mandate, a copy thereof in a sealed envelope, addressed as follows:

John G. Young  
WILLIAMS KASTNER LAW FIRM  
601 Union Street, Ste. 4100  
Seattle, WA 98101

E. Michael Linscheid  
Law Chambers Bldg.,  
345 Franklin Street,  
San Francisco, CA 94102

Jonathan Wiener  
Deputy Attorney General  
455 Golden Gate Avenue, Ste. 11000  
San Francisco, CA 94102

and, I then placed the sealed envelopes in the outgoing mail at 400 McAllister Street, San Francisco, CA. 94102 on the date indicated above for collection, attachment of required prepaid postage, and mailing on that date following standard court practices.

Dated: June 1, 2017

Michael Yuen, Clerk

By: 

Cynthia Herbert  
Deputy Clerk