



December 15, 2017

## **NOTICE OF EMERGENCY REGULATORY ACTION**

Subject: General Lake or Streambed Alteration Agreement for Activities Related to the Cannabis Cultivation

The California Department of Fish and Wildlife (“CDFW”) proposes an emergency rulemaking action under the Administrative Procedure Act (“APA”) to adopt a statewide General Lake or Streambed Alteration Agreement for Activities Related to Cannabis Cultivation. Fish and Game Code section 1617 authorizes CDFW to adopt general lake or streambed alteration agreements for the cultivation of cannabis. However, CDFW must adopt any such general agreement as an emergency regulation. (Fish & G. Code, § 1617, subd. (f).)

The general agreement for the cultivation of cannabis CDFW is adopting (“General Agreement”) is restricted to specific activities related to cannabis cultivation that meet the eligibility criteria in the General Agreement. The activities the general agreement covers are restricted to bridges, culverts, rock fords, and water diversions on non-fin-fish bearing rivers, streams, and lakes in the state. The General Agreement, like any general agreement CDFW adopts under Fish and Game Code section 1617, will be in lieu of an individual streambed alteration agreement (Fish & G. Code, § 1617, subd. (b).)

The Department proposes these emergency regulations for adoption into California Code of Regulations, Title 14, Division 1, Subdivision 3, Chapter 3, section 722.

CDFW is providing this notice under Government Code section 11346.1, subdivision (a)(2). Section 11346.1, subdivision (a)(2), requires that at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the Office of Administrative Law (“OAL”), OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

This notice and the specific text of the emergency regulations to be adopted are available on CDFW’s website at the following address:

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

If you have any questions regarding this matter, please contact Stephen Puccini, Attorney IV, at (916) 653-6590. Related comments or questions may also be submitted to CDFW via email at the following address: [regulations@wildlife.ca.gov](mailto:regulations@wildlife.ca.gov).

### **FINDING OF EMERGENCY**

(Gov. Code, § 11346.1, subd. (b); Cal. Code Regs., tit. 1, § 50)

Pursuant to Government Code section 11346.1, subdivision (b), and California Code of Regulations, title 1, section 50, the California Department of Fish and Wildlife (“CDFW”) finds that the proposed regulatory action—the adoption of a General Lake or Streambed Alteration Agreement for Activities related to Cannabis Cultivation (“General Agreement”)—is an emergency, based on the finding by the Legislature in Fish and Game Code (“FGC”) section 1617, subdivision (f), which reads in relevant part:

The adoption of [a general agreement] is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare.

### **AUTHORITY AND REFERENCE**

(Gov. Code, § 11346.5, subd. (a)(2))

Authority: Sections 1602, 1617, Fish and Game Code.

Reference: Sections 1602, 1617 Fish and Game Code.

### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

(Gov. Code, § 11346.5, subd. (a)(3))

CDFW administers and enforces FGC section 1600 *et seq.* (relating to lake and streambed alterations) through CDFW’s Lake and Streambed Alteration Program. A key provision in FGC section 1600 *et seq.* is FGC section 1602. FGC section 1602 prohibits an entity from conducting an activity that, generally-speaking, will substantially alter the flow, bed, channel, or bank of any river, stream, or lake (“activity”), unless the entity notifies CDFW of the activity, the entity pays the applicable fees, and one of the following occurs:

1. CDFW informs the entity, in writing, that the activity will not substantially adversely affect an existing fish or wildlife resource, and that the entity may conduct the activity without an agreement.
2. CDFW determines that the activity may substantially adversely affect an existing fish or wildlife resource and issues a final agreement to the entity that includes reasonable measures necessary to protect the resource.
3. A panel of arbitrators issues a final agreement to the entity in accordance FGC section 1603.

4. CDFW does not issue a draft agreement to the entity within 60 days from the date notification is complete, in which case the entity may conduct the activity without an agreement by “operation of law.”

“Agreement” means a lake or streambed alteration agreement, and “entity” means any person, state or local governmental agency, or public utility. (Fish & G. Code, § 1601, subs. (a), (d).) The agreement described in FGC section 1602 is a permit that includes protection measures unique to each agreement that CDFW issues on an individual basis after CDFW complies with the California Environmental Quality Act (“CEQA”) (Pub. Resources Code, § 21000 et seq.), either as a lead or responsible agency.

In addition to an individual agreement under FGC section 1602, an entity may obtain authorization for an activity related to cannabis cultivation under a *general* agreement pursuant to FGC section 1617. Unlike an individual agreement: 1) a general agreement is limited to activities related to the cultivation of cannabis; 2) the time periods to process agreements specified in FGC section 1600 *et seq.* do not apply to general agreements; 3) the general agreement is a final agreement that an entity may not dispute; 4) CDFW may only issue a general agreement that CDFW has adopted by emergency regulation; and 5) issuance of a general agreement by CDFW is exempt from CEQA. (Fish & G. Code, § 1617, subs. (a), (c), (d), (f), (g).)

On June 27, 2017, the Medicinal and Adult-Use Cannabis Regulation Safety Act (“Act”) (SB 94) took effect. Under the Act, any person who wants to cultivate cannabis on a commercial basis must obtain a cannabis cultivation license from California Department of Food and Agriculture (“license”). The Act provides that the license is not effective “until the licensee has demonstrated compliance with [FGC section 1602] or receives written verification from [CDFW] that a[n] [agreement] is not required.” (Bus. & Prof. Code, § 26060.1, subd. (b)(3).)

CDFW expects the Act to cause a drastic increase in the number of notifications CDFW receives on a statewide basis, from approximately 2,300 to as many as 10,000. The General Agreement CDFW is adopting will help CDFW manage this workload and expedite compliance with FGC section 1602 for new and existing cannabis cultivators. Instead of having to notify CDFW and wait for an individual agreement, eligible cultivators will be able to obtain coverage under the General Agreement, and therefore comply with FGC section 1602, in less time.

The General Agreement CDFW is adopting is restricted to specific activities related to cannabis cultivation that meet the eligibility criteria identified in the proposed emergency regulations. The activities the General Agreement will cover are restricted to bridges, culverts, rock fords, and water diversions on any non-finfish bearing river, stream, or lake in the state. As a result, CDFW does not expect *all* cultivators to be eligible for the General Agreement. However, any reduction in the number of cultivators who without the General Agreement would need to notify and obtain an agreement under FGC section 1602, will benefit both CDFW and cultivators. The General Agreement will also benefit fish and wildlife resources by reducing the number of cultivators who might

otherwise be able to conduct their activities without an agreement by “operation of law” (Fish & G. Code, § 1602, subd. (a)(4)(D)) due to workload constraints on CDFW staff.

To seek coverage under the General Agreement, the entity will apply through the website for CDFW’s Lake and Streambed Alteration Program by providing information to confirm whether the entity’s proposed activity or activities meet the eligibility criteria in the regulations for coverage under the General Agreement, certifying some of this information, and by paying a fee. The fee will be the same fee the entity would pay to obtain a regular term standard agreement. The fees are specified in CDFW’s fee schedule for agreements in California Code of Regulations, title 14, section 699.5. The term for coverage under the General Agreement will be five years.

The regulations for the General Agreement include a sunset date. Specifically, the regulations will expire January 1, 2023, unless CDFW repeals the regulations or extends this date before the regulations expire.

**The Proposed Regulation Does Not Differ from or Conflict with Federal Law**

The proposed regulation does not differ substantially from or conflict with an existing comparable federal regulation or statute.

**The Proposed Regulation is Not Inconsistent or Incompatible with Existing State Regulations**

The Department conducted an evaluation of existing regulations and this regulation is neither inconsistent nor incompatible with existing state regulations.

**OTHER MATTERS PRESCRIBED BY STATUTE**

(Gov. Code, § 11346.5, subd. (a)(4))

CDFW’s operations are primarily prescribed by the hundreds of provisions set forth in the California Fish and Game Code and California Code of Regulations, Title 14. Other bodies of law that govern CDFW include, but are not limited to, the Government and Penal Codes.

**LOCAL MANDATE DETERMINATION**

(Gov. Code, § 11346.5, subd. (a)(5))

CDFW has determined that the proposed adoption of California Code of Regulations, Title 14, section 722, will not impose a mandate on local agencies or schools districts.

**ESTIMATE OF COST OR SAVINGS**

(Gov. Code, § 11346.5, subd. (a)(6))

A cannabis cultivator will pay the same fee regardless of whether the cultivator applies for an individual agreement or the General Agreement. In addition, state and local

agencies and school districts will not seek coverage under the General Agreement because any activities they conduct that could require notification under FGC section 1602 will not include cannabis cultivation. Therefore, CDFW has determined that the proposed adoption of California Code of Regulations, Title 14, section 722, will not result in any discretionary or nondiscretionary costs (“costs”) or savings to any state agency, will not result in any costs or savings to a local agency or school district, and will not affect federal funding to the state.