

Initial Petition attached for Willow Creek -Alpine County - as explained on Form FGC-1 with supporting photos and a map attached

Gary Smith <[REDACTED]>

Fri 08/05/2022 04:48 PM

To: FGC <FGC@fgc.ca.gov>

Cc: Walt Gentry <[REDACTED]>; Jerry Lloyd <[REDACTED]>

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Hi David and California Fish and Game Commission:

Attached is my original completed Petition for Regulation Change on Form FGC-1 (Rev 0/19) pertaining to Willow Creek in Alpine County, Calif. that I'm emailing to you here ahead of the Fish and Game Commission's next bi-monthly meeting to be held, as you know, later this month on August 17-18 in Fortuna, Calif and most likely via Zoom as well.

I've been reaching out to you via email and/or telephone periodically over the last year or so getting ready to send in this completed Petition which is now ready and attached with this email. Also, as you see, I've attached one letter in pdf format of support of this Willow Creek petition from the Alpine County Fish and Game Commission, one map in jpg format, and 11 photos all in jpg format. I've attached all 13 files in the order that they're mentioned on the attached six-page petition to make it easier for anyone who is reading the attached petition to connect points being made on the written petition to the attached letter of support, map, and photos.

Also, I'm working on a Powerpoint presentation which is not attached and will be a file size of around 30 MB, so would you please let me know how best to send in a Powerpoint slide-presentation of that approx 30 MB file size regarding this "Willow Creek" petition.

I can send that Powerpoint file to you right away if necessary. Most likely, it may be best that I send a link to the Powerpoint slide-show presentation using Dropbox because of its approx 30 MB file size, or I can upon request send you, by regular U.S. mail, a USB thumb drive that would have just the Powerpoint file in both pptx and in pdf as you mentioned in a prior email last month that both file types are needed, and/or I can email you the Powerpoint files, in pptx and in pdf, should you think an email attachment of approx 30 MB is OK.

We hope that the attached Willow Creek petition gets to the attention of the California Fish and Game Commissioners in advance of their next bi-monthly meeting on August 17-18, and we hope will consider elevating the attached Willow Creek petition as an "Agenda" item at the State's Fish & Game Commission's bimonthly meeting in Truckee on Oct. 12-13.

The bi-monthly meeting in Truckee on Oct. 12-13 is probably the closest venue to Willow Creek (Alpine County) of all the upcoming bimonthly meeting venues.

Please call or email with any questions. Thank you.

Gary Smith res/bus tel [REDACTED] cell [REDACTED] San Jose, CA

On 7/12/2022 4:24 PM, FGC wrote:

Good afternoon, Gary,

In response to your questions:

- 1) Once your petition has been submitted by applicable deadlines and accepted, it will be added to the agenda item "Regulation Change Petitions" at the next full Commission



Tracking Number: (_____)

To request a change to regulations under the authority of the California Fish and Game Commission (Commission), you are required to submit this completed form to: California Fish and Game Commission, (physical address) 1416 Ninth Street, Suite 1320, Sacramento, CA 95814, (mailing address) P.O. Box 944209, Sacramento, CA 94244-2090 or via email to FGC@fgc.ca.gov. Note: This form is not intended for listing petitions for threatened or endangered species (see Section 670.1 of Title 14).

Incomplete forms will not be accepted. A petition is incomplete if it is not submitted on this form or fails to contain necessary information in each of the required categories listed on this form (Section I). A petition will be rejected if it does not pertain to issues under the Commission's authority. A petition may be denied if any petition requesting a functionally equivalent regulation change was considered within the previous 12 months and no information or data is being submitted beyond what was previously submitted. If you need help with this form, please contact Commission staff at (916) 653-4899 or FGC@fgc.ca.gov.

SECTION I: Required Information.

Please be succinct. Responses for Section I should not exceed five pages

1. **Person or organization requesting the change (Required)**
Name of primary contact person: Gary Smith
Address: [REDACTED]
Telephone number: [REDACTED]
Email address: [REDACTED]
2. **Rulemaking Authority (Required)** - Reference to the statutory or constitutional authority of the Commission to take the action requested: Statutory authority of the California Fish and Game Commission to amend California Code of Regulations Section 7.50(b)–Alphabetical List of Trout Waters with Special Fishing Regulations–under California Title 14–Natural Resources.
3. **Overview (Required)** - Summarize the proposed changes to regulations: please include the sentence and words, as shown below, in the California Code of Regulations (CCR) Section 7.50(b) Alphabetical List of Trout Waters with Special Fishing Regulations:
Body of Water: Willow Creek (Alpine County) upstream from the confluence with the West Fork of Carson River to the main tributary of Willow Creek a distance of two to three miles.
Open Season: All year.
Gear: Only artificial flies with barbless hooks may be used.
Bag and Possession Limit: 0 Trout any species including Brook Trout



- 4. Rationale (Required) -** Describe the problem and the reason for the proposed change: In the two mile lower section of Willow Creek, the section of Willow Creek upstream from it's confluence with the West Fork of Carson River (see **photo IMG_2343**), Willow Creek's trout population is very low being almost non-existent in that one-to-two mile easily accessible to fishermen lower section of Willow Creek. That lack of trout, in the most accessible for fishermen lower section of Willow Creek, is leaving nearly the entire **two-to-three mile lower-to-middle section of Willow Creek (the section of Willow Creek that this petition pertains to)** with nearly a non-existent trout population except for a small population of small brook trout (under 10 inches total length) in a 1/4 mile meadowy section of Willow Creek about 1 ½ miles upstream from Willow Creek's confluence with the West Fork of Carson River.
- The rationale for the proposed change, requested by this petition, is to encourage conservation and maintenance of a trout population in the more accessible, lower two-mile section of Willow Creek.
- The desired outcome of this petition is to improve the fishing experience for trout fishermen who fish or might be interested in fishing for trout in the most accessible one-to-two mile lower section of Willow Creek. Most of the lower 2-3 mile section of Willow Creek (the section of stream that this petition applies to) is readily accessible by foot to fishermen since a good length of the lower two miles of Willow Creek flows through a meadowy and/or semi meadowy area except for the section of Willow Creek, about ½ mile below (downstream) from Willow Creek's major tributary, which is dense with willows and poplar trees in that approximate ½ mile long section of Willow Creek as is some of the other middle-to-upper three miles of Willow Creek a combination of semi-open small meadows with very dense willows and trees.
- While the petitioner has not seen or caught Lahontan Cutthroat Trout in Willow Creek, Lahontan Cutthroat Trout were most likely present in the entire five mile length of Willow Creek, the main tributary of the West Fork of the Carson River, many years ago. Also, it appears that the lower-to-middle 2-3 mile section of Willow Creek, partially because of its current lack of Trout of any species, including very few Brook Trout in the lower 2-3 mile section of Willow Creek, that the lower 2-3 mile section of Willow Creek could now support and maintain Lahontan Cutthroat Trout should the California Department of Fish and Game decide to plant Lahontan Cutthroat Trout in the lower 2-3 mile section of Willow Creek.
- The existing parking, signage, and walking entry point to the lower, more accessible section of Willow Creek by fishermen will make it easier for the California Department of Fish and Game and Alpine County to communicate Trout fishing Bag, Possession, and fishing Gear regulations and gather written fishing reports from fishermen, who fish the more accessible lower two-mile section of Willow Creek, should this petition be approved by the California Fish and Game Commission.
- This petition should help facilitate the gathering of field information about existing Trout in Willow Creek. Trout fishing data could be gathered from trout fisherman who fish Willow Creek, by hand-written report cards (a volunteer system practiced on other trout streams), in order for the State of California Fish and Game Department to collect info from trout fishermen including what species of trout and what size of trout they're catching and-releasing to Willow Creek (in Alpine County). That volunteer trout fishing report card method, which is lacking at present along the entire five mile lower and upper section of Willow Creek, could help the State of California and trout fishermen in general.
- As shown on National Forest map (see **attached map from Cal Topo with file name: QEL33.jpg**), all of Willow Creek's main branch (5-to-6 miles of adequate year-round flowing water) is entirely on State-



owned land (purple color on map), or on National Forest land (green color on map), with the only exception being a short section approx 1/4 mile (yellow color on map) at approximately 2 ½ miles upstream from Willow Creek’s confluence with the West Fork of Carson River.

The main branch of Willow Creek does not flow through the short section of private property (as shown on attached map).

The “main tributary” of Willow Creek joins Willow Creek (**see attached photos IMG-3126 and IMG_3124 both taken in July 2022**) on Willow Creek’s northeast side about 2 ½ miles upstream from Willow Creek’s confluence with the West Fork of Carson River, and that point is where the “upstream” boundary of this petition for 0 Trout Limit would start on Willow Creek itself but not on the main tributary of Willow Creek.

The “downstream” boundary of this petition, as mentioned above, would be at the confluence of Willow Creek with the West Fork of Carson River, or a distance of approximately 2 ½ miles of Willow Creek, between the downstream and upstream boundaries of Willow Creek that would be impacted by this petition.

There is adequate year-round water flow along approximately all five miles of Willow Creek (lower-to-upper section) to sustain Trout (**see attached photo DSC_0486-001.jpg** taken on Oct. 8, 2021 on the lower section of Willow Creek) . The consistent, natural year-round water flow rate of Willow Creek will – with a Zero Trout Daily Bag and Possession Limit and a Gear regulation of “only artificial flies with barbless hooks may be used” on the lower-to-middle two-to-three mile section of Willow Creek -- help to restore and maintain a healthy trout population in that most accessible lower section of Willow Creek.

As stated above, this petition requests that a 2-3 mile lower section of Willow Creek be added to **Section 7.50(b)**; however, this petition does not (would not) change the trout fishing regulations on the to-upper 2-3 miles of Willow Creek, upstream from its main tributary, where the upper 2-3 mile section of Willow Creek, including its main tributary mentioned above, would continue under the statewide California **Section 5.85 Trout** and statewide California **Section 5.84 Brook Trout** fishing regulations.

The upper 2-3 mile section of Willow Creek, upstream from its main tributary, like the lower 2-3 mile section of Willow Creek, downstream from its main tributary, has an adequate year-round water flow rate to sustain trout (**see attached photo IMG-3094**) taken in July 2022 in the upper section of Willow Creek approximately 3-4 miles upstream from Willow Creek’s confluence with the West Fork of Carson River.

At present, the 2-3 mile upper section of Willow Creek has more trout (Brook Trout) than the 2-3 mile lower section of Willow Creek which (the lower section of Willow Creek) has very few trout (only a small population of small Brook Trout) that remain in the lower two-mile section of Willow Creek.

Thus, this petition’s goal is to help restore and maintain a Trout population (all species of Trout) in the lower 2-3 mile section of Willow Creek, below its main tributary creek.

Willow Creek (Alpine County) has potential to emulate a similar-size stream – the Upper Truckee River – a California State heritage trout stream – that has a 0 Trout bag and possession limit along with fishing Gear Special Regulation – above the Upper Truckee River’s confluence with Showers Creek.

SECTION II: Optional Information



5. **Date of Petition:** August 5, 2022
6. **Category of Proposed Change**
☒ **Sport Fishing**
☐ Commercial Fishing
☐ Hunting
☐ Other, please specify: [Click here to enter text.](#)
7. **The proposal is to:** (*To determine section number(s), see current year regulation booklet or <https://govt.westlaw.com/calregs>*)
☒ **Amend Title 14 Section(s):** by adding Willow Creek (Alpine County) to California Code of Regulations–Section 7.50(b) Alphabetical List of Trout Waters with Special Fishing Regulations

☐ Add New Title 14 Section(s):
☐ Repeal Title 14 Section(s):
8. **If the proposal is related to a previously submitted petition that was rejected, specify the tracking number of the previously submitted petition**
Or ☒ Not applicable.
9. **Effective date:** If applicable, identify the desired effective date of the regulation.
If the proposed change requires immediate implementation, explain the nature of the emergency: Prefer sometime in year 2023, when the next annual update to Section 7.50(b) Alphabetical List of Trout Waters with Special Fishing Regulations will start.
10. **Supporting documentation:** Identify and attach to the petition any information supporting the proposal including data, reports and other documents:
See attached **letter with date of July 12, 2022 from the Alpine County Fish and Game Commission**. Also, a Board Member of the Alpine County Fish and Game Commission mentioned during the “Willow Creek” agenda item at their Board meeting on October 12, 2021, that “they have not been planting trout in Willow Creek.”
For a comparison and a confirmation of adequate water flow rates in Willow Creek (Alpine County), see two attached **photos taken at the same location but in different years**, with one **attached photo DSC_0982.jpg** taken on July 27, 2017 after a wet winter that year, and the other **attached photo DSC_0480-002.jpg** taken on Oct. 5, 2021 in early Fall before any significant rain or snow began last Fall after two consecutive below-normal winter snowfall seasons.
Using artificial flies with barbless hooks, in July 2017 and in 2019, Gary Smith fished upstream from wooden bridge over Willow Creek (**see attached photo IMG_2999** a photo taken on 6/10/22) near parking area on Highway 89, for approximately ½ mile upstream along Willow Creek, but he did not



catch or see any trout.

Petitioner fished downstream along Willow Creek, from the same wooden bridge mentioned above, for approximately ½ mile downstream to the confluence of the West Fork of Carson River, one day in July 2020, and he saw a few small trout in the six to eight inch length (species of trout were not able to be identified).

On Oct. 4, 2021, petitioner fished downstream the same approximately ½ mile of Willow Creek from the wooden bridge mentioned above, as he did the prior year, to the confluence of the West Fork of Carson River, but he did not see or catch any Trout along the same section of Willow Creek where he saw a few small trout the year before.

On June 9, 2022, petitioner fished starting further upstream from the wooden bridge mentioned above along Willow Creek, starting approximately one mile upstream from the confluence with the West Fork of Carson River, and then for approximately one mile going upstream over several hours of fishing, petitioner caught-and-released four small trout all approximately six to eight inches in length. All four Trout were Brook Trout as shown by two attached photos (**IMG_2985 and IMG_2988**) that show two small Brook Trout that petitioner caught-and-released along Willow Creek approximately 1 1/4 mile to 1 ½ mile upstream from Willow Creek's confluence with the West Fork of Carson River.

- 11. Economic or Fiscal Impacts:** Identify any known impacts of the proposed regulation change on revenues to the California Department of Fish and Wildlife, individuals, businesses, jobs, other state agencies, local agencies, schools, or housing:

Willow Creek could become better known to more people—both trout fishermen and others – should this petition be accepted by the State of California Fish & Game Commission.

Improving the trout fishing experience for any angler on the lower two mile section of Willow Creek, may in turn help the local economy by attracting more anglers to Alpine County. Right

now, as mentioned above, there are very few if any trout on the lower 1 to 1 ½ mile section of Willow Creek (the most accessible section of Willow Creek to the average trout fishermen) which doesn't make Willow Creek's most accessible section very attractive for trout fishermen, who prefer to fish where at least a modest population of trout are present in the stream. A restored trout population (all species of Trout including Brook Trout) in the more accessible lower 1-2 section of Willow Creek, will help attract anglers of all levels, and can help business including small businesses in and near Alpine County. The State of California may see less need to stock hatchery-raised Trout species where, as you know, some hatchery-raised Trout species cannot reproduce in the wild. When streams like the lower 2-3 mile section of Willow Creek have a zero Trout Limit and Gear Regulations, that can help increase the wild trout population increase which will be an attraction to many trout fishermen and businesses in the area. The outcome of this petition, should it be approved by the State of California, could make better use of the **existing parking and existing signage (see attached photo DSC_0475-001.JPG) near Willow Creek** as mentioned above, that the State of California and Alpine County have invested in on Highway 89 near the intersection of Highways 88 and 89 in Picketts Junction.

A zero Trout Limit with fishing Gear “only artificial flies with Barbless Hooks are allowed for the lower two mile section of Willow Creek” could be posted next to existing signage as well as a trout fisherman report card (voluntary reporting) station, placed next to the existing signage at the parking area on Highway 89 near Picketts Junction, which can benefit the State Fish & Game Commission with data from trout fishermen (voluntary basis), as mentioned above, which in turn could help local businesses in



Alpine County.

12. Forms: If applicable, list any forms to be created, amended or repealed: Not applicable

SECTION 3: FGC Staff Only

Date received: [Click here to enter text.](#)

FGC staff action:

- ☐ Accept - complete
- ☐ Reject - incomplete
- ☐ Reject - outside scope of FGC authority

Tracking Number

Date petitioner was notified of receipt of petition and pending action: _____

Meeting date for FGC consideration: _____

FGC action:

- ☐ Denied by FGC
- ☐ Denied - same as petition _____
- ☐ Granted for consideration of regulation change

Tracking Number

Request to correct info shown on Section I Question 2 on new Petition #2022-13 and request to waive 10-day response requirement

Gary Smith <[REDACTED]>

Fri 08/12/2022 11:19 AM

To: FGC <FGC@fgc.ca.gov>

Cc: Gary Smith <[REDACTED]>; [REDACTED]
<[REDACTED]>; [REDACTED] <[REDACTED]>

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Hello Fish and Game Commission:

In response to your helpful email that you sent as shown below on August 11, 2022, would you please correct the info that I show on Petition no. 2022-13 under that petition section I, Question 2 "Rule Making Authority" by adding the following text:

Fish and Game Code

Division 1. Fish and Game Commission (Sections 101-500)

Chapter 2. Regulation of Take and Possession Generally (Sections 200-275);

whereby,

Section 200. (a) states: "There is hereby delegated to the Commission the power to regulate the taking or possession of birds, mammals, fish, amphibians, and reptiles."

Section 205 states "Any regulation of the Commission pursuant to this article which relates to fish, amphibia and reptiles, may apply to all or any areas, districts, or portion thereof at the discretion of the Commission, and may do any or all of the following as to any or all species or subspecies:

- (a) Establish, extend, shorten, or abolish open seasons and closed seasons.
- (b) Establish, change, or abolish bag limits, possession limits, and size limits.
- (c) Establish and change areas or territorial limits for their taking.
- (d) Decrease the manner and the means for their taking."

Section 219 states "Any regulation adopted pursuant to this article may supersede any section of this code designated by number in the regulations, but shall do so only to the extent specifically provided in the regulation. A regulation which is adopted pursuant to this section shall be valid only to the extent that it makes additions, deletions, or changes to this code under the following circumstances:

(a) The regulation is necessary for the protection of fish, wildlife, and other natural resources under the jurisdiction of the Commission."

Also, unrelated to the Fish and Game Code Sections noted above, would you please waive the "10-day Response Requirement" in regard to my Petition #2022-13.

Please call [REDACTED] or email [REDACTED] with any questions. Thank you.
Gary Smith

> On Aug 11, 2022, at 4:29 PM, FGC <FGC@fgc.ca.gov> wrote:
>