

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
NOTICE OF PROPOSED RULEMAKING ACTION**

**ADD SECTION 723, SUSPENSION OR REVOCATION OF
LAKE AND STREAMBED ALTERATION AGREEMENTS
TO TITLE 14 OF THE CALIFORNIA CODE REGULATIONS**

May 3, 2024

In accordance with Fish and Game Code section 1612, the Department of Fish and Wildlife (“Department”) proposes to add Section 723, Suspension or Revocation of Lake and Streambed Alteration Agreements to Title 14 of the California Code of Regulations. Proposed Section 723 establishes a process by which the Department may suspend or revoke a Lake or Streambed Alteration Agreement if the Department determines the permittee is not in compliance with the terms of their agreement or fails to submit a timely status report when a report is required.

The proposed regulation described below may be adopted after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held virtually via webinar/teleconference from 11:00 a.m. to 12:00 p.m. on Tuesday, June 18, 2024. Instructions for participation in the webinar/teleconference hearing will be posted at www.wildlife.ca.gov/Notices/Regulations/LSA-Revocation-Suspension at least seven days in advance of the meeting.

WRITTEN COMMENT PERIOD

Written comments may be submitted at any time before or on June 18, 2024, by mail or email to the contact as follows:

California Department of Fish and Wildlife
Regulations Unit
Attn: Mike Randall, Analyst
P.O. Box 944209
Sacramento, CA 94244-2090
Email: Regulations@wildlife.ca.gov

AUTHORITY AND REFERENCE

Authority: Sections 702, 1605, and 1612, Fish and Game Code.

Reference: Sections 1601, 1602, 1605, and 1612, Fish and Game Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Department proposes to add section 723, Suspension or Revocation of Lake or Streambed Alteration Agreements, to title 14 of the California Code of Regulations. Section 723 implements Fish and Game Code Section 1612, which requires the Department to adopt regulations establishing a procedure for suspending or revoking a Lake and

Streambed Alteration agreement (“agreement”) when the Department determines the permittee is not in compliance with the agreement or fails to provide timely status reports where the permittee has a long-term agreement. The procedure must require the Department to provide written notice to the permittee explaining the basis for suspension or revocation and an opportunity to correct any deficiencies.

BACKGROUND

Fish and Game Code Section 1602 requires an entity, as defined in Section 1601, to notify the Department before the entity substantially alters the flow, bed, channel, or bank of any river, stream, or lake. If the Department determines the project described in the notification could substantially adversely affect an existing fish or wildlife resource, the project will require agreement from the Department that includes resource protection measures, among other terms.

The term of an agreement may not exceed five years unless the entity requests a longer term, and the Department agrees. (Fish & G. Code, § 1605, subds. (a)(1), (g).) To obtain a long-term agreement, the entity must agree to provide a status report to the Department every four years. (Fish & G. Code, § 1605, subd. (g)(2).)

REGULATORY PROPOSAL

To meet the requirements under Fish and Game Code Section 1612, the Department proposes adding Section 723 to title 14 of the California Code of Regulations, which will do the following:

1. Define the following terms used in Section 1612 and the proposed regulation: 1) “deficiency”; 2) “Lake or Streambed Alteration agreement” or “agreement”; 3) “permittee”; and 4) “status report.”
2. Allow the Department to suspend or revoke an agreement when the Department determines the entity is not in compliance with the terms of the agreement or fails to provide timely status reports where the entity has a long-term agreement.
3. Establish the following procedure the Department must follow before suspending or revoking an agreement in accordance with Section 1612:

Step 1: The Department determines the entity has failed to comply with the terms of their agreement or to file a timely status report. The Department sends the entity a notice of non-compliance that describes the deficiency, as that term is defined in the proposed regulation, directs the entity to correct each deficiency by the date in the notice, and explains that the Department will suspend the agreement unless the entity corrects each deficiency by the date in the notice.

Step 2: If the entity demonstrates each deficiency has been corrected by the date in the notice of non-compliance, the Department must notify the entity the agreement remains in effect. If the entity does not demonstrate each deficiency has been corrected by the date in the notice, the Department must send the entity a notice of suspension that explains: 1) the agreement is suspended; and 2) if each deficiency has not been corrected by the date in the suspension notice, the agreement will be revoked.

Step 3: If the entity demonstrates each deficiency has been corrected by the date in the notice of suspension, the Department must notify the entity the suspension has been released and the agreement is again in effect. If the entity does not demonstrate each deficiency has been corrected by the date in the notice, the Department must send the entity a notice of revocation that explains the agreement has been revoked.

4. Provide that the effective date of any suspension or revocation shall be 10 days from the date of the notice of suspension or notice of revocation under steps 3 and 4, above.
5. Allow the Department to set the date by which an entity must correct any deficiency identified in a notice of non-compliance and notice of suspension (“end date”) on a case-by-case basis based on certain factors identified in the proposed regulation.
6. Allow the Department to extend any end date upon written request by the entity based on certain factors identified in the proposed regulation.
7. Specify that the method by which any notices or other writings the Department delivers to an entity must be by regular mail and email.
8. Clarify that that an entity that is not in compliance with the terms of an agreement or fails to provide timely status reports is subject to all fines and penalties imposed by the Fish and Game Code or any other law.

BENEFITS OF THE PROPOSED REGULATIONS

The purpose of an agreement is to protect fish and wildlife resources that may be substantially adversely affected by the project or activities the agreement authorizes. The purpose of a status report for a long-term agreement is for the Department to evaluate the efficacy of these measures. By allowing the Department to suspend or revoke an agreement administratively when an entity is not in compliance with the terms of an agreement, which includes resource protection measures, or fails to provide timely status reports, the proposed regulation benefits the state’s fish and wildlife resources. Without the proposed regulation, the Department will need to continue relying on the Attorney General or a district or city attorney to bring the entity into compliance. This can take much longer than an administrative action by the Department under Fish and Game Code Section 1612 and because of the delay, result in greater harm to resources.

CONSISTENCY AND COMPATIBILITY WITH EXISTING REGULATIONS

The Legislature, through Fish and Game Code Section 1612, has directed the Department to adopt regulations establishing a procedure for suspending or revoking an agreement. The Department has reviewed its existing regulations in title 14 of the California Code of Regulations and finds that the proposed regulation is neither inconsistent nor incompatible with the existing regulations in title 14. The Department has searched the regulations in all other titles of the California Code of Regulations and has found no other regulations that set forth the requirements in the Department’s proposed regulation.

DOCUMENTS INCORPORATED BY REFERENCE: None.

DOCUMENTS RELIED UPON: None.

DISCLOSURES REGARDING THE PROPOSED ACTION:

Impact of the Regulatory Action/ Results of the Economic Impact Assessment

The potential for significant statewide adverse economic impacts that might result from the proposed regulation 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:

None. The Department concludes that the proposed regulation will not have any adverse economic impact on any business. The proposed regulation imposes no fees or costs, does not require any action by any business, and would only apply to a business if it has an agreement and the business, as a permittee, is not in compliance with it.

- (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:

None. The Department concludes that the proposed regulation will not create or eliminate jobs, create new businesses, eliminate existing businesses, or expand businesses in the state. As explained above, the purpose of the proposed regulation is to allow the Department to suspend or revoke an agreement if after being given an opportunity to come into compliance with their agreement, the permittee fails to do so. The proposed regulation will not benefit the health and welfare of California residents or worker safety. However, the proposed regulation could benefit the state's environment by ensuring a permittee is following their agreement, the purpose of which is to protect fish and wildlife resources the project covered in the agreement could adversely affect.

- (c) Cost Impacts on Representative Person or Business:

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulation. The proposed regulation does not impose any fees or costs.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None.

- (e) Nondiscretionary Costs/Savings to Local Agencies: None.

- (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.

EFFECT ON SMALL BUSINESS

None. The Department concludes that the proposed regulation will not have any effect on small business. As explained above, the purpose of the proposed regulation is to allow the

Department to suspend or revoke an agreement if after being given an opportunity to come into compliance with their agreement, the permittee fails to do so.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The Department concludes that the proposed regulation will not create additional job opportunities; result in the elimination of jobs or existing businesses, create new businesses, eliminate existing businesses, or expand businesses in the state.

(a) Effects of the Regulation on the Creation or Elimination of Jobs Within the State:

None. The cumulative effects of the changes statewide are expected to be neutral regarding the creation or elimination of jobs within the state.

(b) Effects of the Regulation on the Creation of New Businesses or the Elimination of Existing Businesses Within the State:

None. The cumulative effects of the changes statewide are expected to be neutral regarding the creation or elimination of businesses within the state.

(c) Effects of the Regulation on the Expansion of Businesses Currently Doing Business Within the State:

None. The cumulative effects of the changes statewide are expected to be neutral regarding the expansion of businesses within the state.

(d) Benefits of the Regulation to the Health and Welfare of California Residents:

None. The cumulative effects of the changes statewide are expected to be neutral regarding the health and welfare of California residents.

(e) Benefits of the Regulation to Worker Safety:

The cumulative effects of the changes statewide are expected to be neutral regarding worker safety.

(f) Benefits of the Regulation to the State's Environment:

The purpose of the agreement is to protect fish and wildlife resources that may be substantially adversely affected by the project or activities the agreement authorizes. The purpose of a status report for a long-term agreement is for the Department to evaluate the efficacy of these measures. By allowing the Department to suspend or revoke an agreement when a permittee is not in compliance with the terms of an agreement, which includes resource protection measures, or fails to provide timely status reports, the proposed regulation benefits the state's fish and wildlife resources. If the Department were unable to suspend or revoke an agreement in these circumstances, it would need to rely on the Attorney General or a district or city attorney to bring the permittee into compliance. This would take much longer and could result in greater harm to resources because of the delay, assuming the Attorney General or a district or city attorney even takes the case.

The cumulative effects of the changes statewide are expected to be minimal regarding the state's environment. This largely depends on the number of permittees out of compliance with their agreements and how many of these permittees the Department

brings into compliance with the proposed regulation.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternatives to the proposed regulation it considered or that have otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Department invites interested persons to present statements or arguments with respect to alternatives to the regulations during the written comment period.

AVAILABILITY OF RULEMAKING DOCUMENTS AND CONTACT PERSONS

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout format can be accessed through the Department website at <https://wildlife.ca.gov/notices/regulations/>.

The proposed text (the “express terms”) of the regulations, as well as all related documents upon which the proposal is based (rulemaking file), are on file and available for public review at 715 P Street, Sacramento, CA 95814 (17th floor). The rulemaking file will be available electronically upon request by contacting the Department at Regulations@wildlife.ca.gov. Inquiries concerning the regulatory process or requests for documents should be directed to:

California Department of Fish and Wildlife
Mike Randall, Regulations Unit
P.O. Box 944209
Sacramento, CA 94244-2090
Telephone: (916) 902-9109
Email: regulations@wildlife.ca.gov

Inquiries concerning the subject matter or substance of the proposed action should be directed to:

Nicole Gephart, Senior Environmental Scientist
California Department of Fish and Wildlife
P.O. Box 944209
Sacramento CA 94244-2090
Telephone: (916) 594-6143
Email: regulations@wildlife.ca.gov

As of the date this notice is published, the rulemaking file consists of:

1. STD Form 400: Notice of Proposed Action

2. Initial Statement of Reasons
3. Proposed Text of the Regulation: Addition of Section 723, Title 14, CCR
4. Economic and Fiscal Impact Assessment (Form STD 399) and addendum

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

The rulemaking file is available online at: <https://www.wildlife.ca.gov/Notices/Regulations/>

AVAILABILITY OF CHANGED OR MODIFIED TEXT

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

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by checking the website at the link provided above, or the Regulations Unit at the address above.