

Proposed Regulatory Text

Section 723 is added to read:

§ 723. Suspension or Revocation of Lake and Streambed Alteration Agreements.

(a) Definitions.

(1) "Deficiency" means the term or terms of the lake or streambed alteration agreement the permittee is not in compliance with, and any harm such noncompliance has caused, is causing, or could cause to fish and wildlife resources, or failure by the permittee to provide a timely status report.

(2) "Lake or streambed alteration agreement" or "agreement" means an individual agreement described in subdivision (a)(4)(B) of Section 1602 of the Fish and Game Code, which includes a long-term agreement the department may issue under subdivision (g) of Section 1605 of the Fish and Game Code.

(3) "Permittee" is the entity responsible for complying with the terms of an agreement and submitting timely status reports where the permittee has a long-term agreement.

(4) "Status report" means a written report a permittee with a long-term agreement must provide the department every four years in accordance with subdivision (g)(2) of Section 1605 of the Fish and Game Code.

(b) Basis for Suspension or Revocation. 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 the agreement or has failed to provide a timely status report. If the department determines there is a basis to suspend or revoke an agreement, before the department suspends or revokes the department shall issue a notice in accordance with this section beginning with the notice described in subsection (c).

(c) Notice of Non-Compliance. If the department determines there is a basis under subdivision (b) to suspend or revoke an agreement, the department shall issue a written notice of non-compliance to the permittee. The notice shall:

(1) explain the basis for the department's determination;

(2) specify the action(s) the permittee must take to correct each deficiency;

(3) specify the end date by which each deficiency must be corrected;

(4) describe the procedure set forth in subsection (d); and

(5) provide a department contact and their mailing address, email address, and primary telephone number.

(d) Determination after Notice of Non-Compliance.

(1) After receiving a notice of non-compliance, the permittee must notify by email the department contact identified in the notice by the end date therein and demonstrate each deficiency has been corrected.

(2) If the department determines the permittee has demonstrated each deficiency specified in the notice of non-compliance has been corrected, the department shall notify the permittee in writing that the agreement remains in effect.

(3) If the department determines the permittee has not demonstrated each deficiency specified in the notice of non-compliance has been corrected, the department shall suspend the agreement in accordance with subsection (e).

(e) Notice of Suspension. When the department suspends an agreement pursuant to subsection (d)(3), the department shall issue a written notice of suspension to the permittee. The notice shall:

(1) include the basis for the department's decision, including each deficiency specified in the notice of non-compliance that was not corrected by the end date therein;

(2) specify the effective date of the suspension, which shall be 10 days from the date of the notice of suspension;

(3) specify the end date by which each deficiency specified in the notice of suspension must be corrected or completed to release the suspension;

(4) describe the procedure set forth in subsection (f); and

(5) provide a department contact and their mailing address, email address, and primary telephone number.

(f) Determination after Notice of Suspension.

(1) After receiving a notice of suspension, the permittee must notify by email the department contact identified in the notice by the end date therein and demonstrate each deficiency specified in the notice has been corrected.

(2) If the department determines the permittee has demonstrated each deficiency specified in the notice of suspension has been corrected, the department shall release the suspension and notify the permittee in writing that the agreement is again in effect.

(3) If the department determines the permittee has not demonstrated each deficiency specified in the notice of suspension has been corrected, the department shall revoke the agreement in accordance with subsection (g).

(g) Notice of Revocation. When the department revokes an agreement, it shall issue a written notice of revocation to the permittee. The notice shall:

(1) identify the basis for the department's decision, including each deficiency specified in the notice of suspension that was not corrected by the end date therein;

(2) specify the effective date of the revocation, which shall be 10 days from the date of the notice of revocation; and

(3) provide a department contact and their mailing address, email address, and primary telephone number.

(h) End Date to Correct Deficiency in Notice of Non-Compliance. The department shall consider the following factors to determine the end date by which each deficiency specified in a notice of non-compliance under subsection (c) must be corrected:

(1) the harm each deficiency is causing or will cause to fish and wildlife resources until the deficiencies are corrected; and

(2) the ability to correct the deficiencies by the end date in the notice of non-compliance based on the type and scope of work required.

(i) End Date to Correct Deficiency in Notice of Suspension. The department shall consider the following factors to determine the end date by which each deficiency specified in a notice of suspension under subsection (e) must be corrected:

(1) the factors identified in subsections (h)(1) and (2); and

(2) the steps that have been taken to correct the deficiencies specified in the notice of suspension.

(j) Extension of End Dates.

(1) Notwithstanding subsections (d) and (f), the department may extend the end date specified in a notice of non-compliance or notice of suspension by which each deficiency must be corrected, if:

(A) the permittee requests an extension in writing to the department contact person identified in the notice at least 14 days prior to the end date in the notice;

(B) the permittee demonstrates to the department that significant steps have been taken to correct the deficiencies specified in the notice, but the steps that must be taken cannot be completed due to circumstances not within the permittee's control, such as, adverse weather conditions or the availability of department staff or the permittee to meet onsite when a site inspection is needed for the permittee to demonstrate that the actions specified in the notice of non-compliance or notice of suspension have been taken;

(C) the permittee details the steps that will be taken to correct the deficiencies if the department grants the permittee's extension request; and

(D) the department determines that extending the end date is unlikely to cause greater harm to fish and wildlife resources compared to not extending the end date.

(2) If the department is unable to grant or deny the permittee's extension request by the end date, the end date shall be extended until the department grants or denies the request.

(k) Notices. The department shall send any notice under this section, or any writing related thereto to the permittee by mail and email using the permittee's mailing and email addresses listed in the permittee's notification under Section 1602 of the Fish and Game Code or the permittee's agreement. If the permittee has notified the department of a change in their mail or email address, the department shall use this address.

(l) Penalties and Fines. Failure to comply with the terms of an agreement or to provide a timely status report is a violation of the Fish and Game Code subject to all penalties and fines the code specifies. Accordingly, this section does not preclude the department from pursuing a criminal, civil, or administrative case against a permittee in lieu of or in addition to suspending or revoking the permittee's agreement in accordance with this section.

NOTE: Authority cited: Sections 702, 1605, and 1612, Fish and Game Code. Reference: Sections 1601, 1602, 1605, and 1612, Fish and Game Code.