

Amended Proposed Regulatory Text

Section 723 is added to read:

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

(a) Definitions.

(1) "Agreement" means an individual lake or streambed alteration agreement described in subdivision (a)(4)(B) of Section 1602 of the Fish and Game Code, which includes both agreements with a term of up to five years and long-term agreements the department may issue under subdivision (g) of Section 1605 of the Fish and Game Code.

(2) "Day" means calendar day.

(23) "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.

(34) "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.

(45) "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.

(6) "Timely status report" means providing a status report to the department every four years as required by 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), subject to any dispute resolution provision in the agreement.

(c) Notice of Non-Compliance. Noncompliance. 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) explain the permittee has a right to appeal the department's determination in subdivision (c)(1) in accordance with subsection (l); and
- (5) provide the department contact, and their mailing address, email address, and primary telephone number.

(d) Determination after Notice of Non-Compliance/Noncompliance.

(1) Unless the permittee appeals the department's determination in subsection (c)(1) in accordance with subsection (l), Afterafter receiving a notice of non-compliance/noncompliance, the permittee must notify/respond by mail or email to the department contact identified in the notice by the end date therein and demonstrate each deficiency specified in the notice has been corrected. The department shall inform the permittee of its determination under subsection (d)(2) or (d)(3) within 30 days of the permittee's response or, if the department finds a site inspection is needed, within 30 days after the inspection has been completed.

(2) If the department determines the permittee has demonstrated each deficiency specified in the notice of non-compliance/noncompliance has been corrected, the department shall notify/inform the permittee in writing that the agreement remains in effect and no further response to the notice of noncompliance by the permittee is needed.

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

(e) Notice of Suspension. When the department suspends/determines suspending an agreement is warranted 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/determination, including each deficiency specified in the notice of non-compliance/noncompliance that was not corrected by the end date therein;

(2) specify the effective date of the suspension, which shall be 10/15 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) explain the permittee has a right to appeal the department's determination in subsection (d)(3) in accordance with subsection (l), in which case the suspension will be stayed upon the department's receipt and acknowledgment of the appeal and pending resolution of the appeal; and

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

(f) Determination after Notice of Suspension.

(1) Unless the permittee appeals the department's determination in subsection (d)(3) in accordance with subsection (l), ~~After~~after receiving a notice of suspension, the permittee must ~~notify~~respond by mail or email to the department contact identified in the notice by the end date therein and demonstrate each deficiency specified in the notice has been corrected. The department shall inform the permittee of its determination under subsection (f)(2) or (f)(3) within 30 days of the permittee's response or, if the department finds a site inspection is needed, within 30 days after the inspection has been completed.

(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~~inform the permittee in writing that the agreement is ~~again~~remains 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~~inform the permittee the agreement is being revoked in accordance with subsection (g).

(g) Notice of Revocation. When the department ~~revokes~~determines revoking an agreement is warranted pursuant to subsection (f)(3), 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 ~~40~~15 days from the date of the notice of revocation; ~~and~~

(3) explain the permittee has a right to appeal the department's determination in subsection (f)(3) accordance with subsection (l), in which case any suspension will remain in effect and

the revocation will be stayed upon the department's receipt and acknowledgment of the appeal and pending resolution of the appeal; and

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

(h) Authority to Issue Notices. Any notice of noncompliance must be approved by an Environmental Program Manager or their designee, who shall be at or above manager level in the department regional office that issued the agreement. Any notice of suspension or notice of revocation must be approved by the Regional Manager or their designee, who shall be at or above manager level in the department regional office that issued the agreement.

(hi) End Date to Correct Deficiency in Notice of ~~Non-Compliance~~Noncompliance. The department shall consider the following factors to determine the end date by which each deficiency specified in a notice of ~~non-compliance~~noncompliance 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~~noncompliance based on the type and scope of work required.

(ij) 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 (hi)(1) and (2); and

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

(jk) Extension of End Dates.

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

(A) the permittee requests an extension in writing by mail or email to the department contact person identified in the notice at least ~~4~~15 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.

(l) Appeal. A permittee may appeal a notice of noncompliance, a notice of suspension, or a notice of revocation by the department in accordance with the process and timelines set forth in this subdivision.

(1) Request.

(A) To appeal a department notice, the permittee shall submit a request in writing by mail or email to the department using the mailing or email address below. The submittal shall include a copy of the notice being appealed; the grounds for the appeal; and any supporting information. Any request by the permittee to present oral arguments, shall be included in the submittal. The permittee shall include the following certification followed by the permittee's signature at the end of the submittal: "I certify that the information submitted in this request is true and correct to the best of my knowledge and belief and understand that any false statement herein may serve as cause for the reviewing officer to deny my appeal."

By mail:

Director's Office
California Department of Fish and Wildlife
P.O. Box 944209
Sacramento, CA 94244-2090
Attn.: Section 1612 - Appeal

By email:

section1612appeal@wildlife.ca.gov

(B) Consistent with subdivision (6)(C) below, a permittee may not appeal a department notice based on a ground the permittee included in a previous appeal decided by the reviewing officer. In this event, the reviewing officer shall not consider this ground when deciding the appeal or if every ground in the appeal was included in a previous appeal by the permittee, the reviewing officer shall deny the permittee's request without further review.

(2) Assignment. Upon receipt of the appeal the department's director or their designee shall provide permittee written acknowledgment of receipt and assign the appeal to a department manager in the department's headquarters not involved in the notice being appealed (hereinafter, the "reviewing officer").

(3) If the permittee requests to present oral arguments, the reviewing officer shall receive such oral arguments as part of an informal hearing conducted virtually and within 20 days of receiving the permittee's request; provide the permittee a written notice that includes the hearing date and time; how to access the hearing; and any rules governing the hearing.

(4) Review. The reviewing officer's decision on appeal shall be made based on the agreement; the department notice; the information submitted by the permittee, including oral arguments, if any; any information by department employees involved in the notice; any additional information the reviewing officer may request from the permittee during the review period; and any other relevant information the reviewing officer may rely on to make a final decision on appeal. Any request by the reviewing officer for additional information from the permittee shall be in writing. If the permittee fails to provide any additional information within 15 days of the reviewing officer's request, the reviewing officer may make a final decision on appeal without this information.

(5) Timelines. The following timelines apply to the appeal process described in this subdivision (I):

(A) For the department to consider an appeal by a permittee, the permittee's request:

1. must be postmarked (if by mail) or sent (if by email), no later 20 days after the department's issuance of the notice the permittee is appealing, and

2. comply with the requirements in subsection (I)(1).

The deadline for filing an appeal may not be extended or otherwise waived.

(B) The department's director or their designee shall assign any appeal to the reviewing officer within 15 days of receiving the permittee's request and notify the permittee in writing the reviewing officer's name, title, and contact information within 15 days of the assignment.

(C) If the permittee does not request to present oral arguments, the reviewing officer shall make a final decision on the permittee's appeal within 45 days of being assigned the permittee's request. If the permittee asks to present oral arguments to the reviewing officer, the reviewing officer shall make a final decision on the permittee's appeal within 45 days after the informal hearing concludes. If the officer requests additional information from the permittee, the reviewing officer may extend either of these deadlines by 30 days after receiving the additional information from the permittee. Consistent with subsection (I)(4), if the permittee fails to provide any additional information within 15 days of the reviewing officer's request, the reviewing officer may make a final decision on appeal without this information.

(6) Decision on Appeal.

(A) The reviewing officer may confirm, modify, or vacate a notice of noncompliance or notice of suspension. If the reviewing officer confirms or modifies the notice, the decision on appeal shall include any modifications to the notice of noncompliance or notice of suspension; extend the end date by which any deficiency must be corrected to account for the appeal period and any modifications to the notice; and, if the notice being appealed is a notice of suspension, identify the new effective date of the suspension, which shall be 15 days from notice of decision on appeal;

(B) The reviewing officer may confirm or vacate a notice of revocation. If the reviewing officer confirms the notice, the decision on appeal shall specify the new effective date of the revocation, which shall be 15 days from the notice of decision on appeal. If the reviewing officer vacates the notice of revocation, suspension of the agreement shall be released effective the date of the notice of decision on appeal.

(C) The reviewing officer's notice of decision shall be the final administrative decision of the department.

(D) The decision on appeal shall be in writing and sent to the permittee within five days of the decision.

(km) Notices. The department shall send any notice under this section, or any writing related thereto to the permittee by mail and/or email using the permittee's mailing and/or 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.

(n) This section applies to any agreement in effect on or after the date this section takes effect subject to Section 1616 of the Fish and Game Code.

(lo) 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.