

State of California  
Fish and Game Commission  
Final Statement of Reasons for Regulatory Action

Add Section 685  
Title 14, California Code of Regulations  
Re: Prescribed Herbivory on Department Lands

I. Dates of Statements of Reasons

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|----------------------------------|-----------------------|
| (a) Initial Statement of Reasons | Date: July 16, 2024   |
| (b) Final Statement of Reasons   | Date: October 2, 2024 |

II. Dates and Locations of Scheduled Hearings

A public hearing pursuant to Government Code section 11346.8 was held as follows:

- Date: September 24, 2024
- Time: 1:00 p.m.- 2:00 p.m.
- Format: Virtual Hearing via Zoom (link and access information posted to <https://wildlife.ca.gov/Notices/Regulations/Prescribed-Herbivory>)

III. Update

This Final Statement of Reasons (FSOR) reiterates the background and intent of the Department of Fish and Wildlife’s (Department) adoption of Section 685, Prescribed Herbivory on Department Lands, into Title 14, California Code of Regulations (CCR).

There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Action.

IV. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting Those Considerations

Two appendices are provided as part of this FSOR:

- Appendix A, contains all of the email communications and letters received with the specific objections or recommendations indicated by numbering.
- Appendix B, Transcript of the public hearing (teleconference) and oral comments.

All comments received during the original 45-day comment period and at the public hearing held on September 24, 2024 are responded to by the Department as noted below. There have been no amendments to the regulatory text or additional information gathered for this rulemaking.

Amanda Simpson, McGeorge School of Law, September 9, 2024, written comment letter

Comment 1-a: Supports the proposed language to enter prescribed herbivory service contracts to reduce vegetative fuels or preserve habitat. Urges the Department to undergo CEQA review for proposed projects.

Response 1-a: Support for the proposed regulation is noted. The Department will assess each targeted grazing project for potential impacts and will comply with CEQA requirements.

Comment 1-b: States that grazing can be an appropriate alternative to prescribed fire or mechanical treatments in certain circumstances.

Response 1-b: Comment noted.

Comment 1-c: States that the Department should be careful to ensure grazing practices achieve ecological benefits, while ensuring the efficient and responsible use of water, soil, and cultural resources. Additionally, grazing needs must not exceed water supply and grazing should return on a rotational basis for soil erosion prevention.

Response 1-c: Even when fuels reduction is the primary goal of a project, secondary benefits to biodiversity will be considered and promoted.

Comment 1-d: States that grazing should only be conducted to promote ecological objectives, and commercial grazing should not replace natural herbivores.

Response 1-d: The Department uses grazing to achieve numerous ecological objectives, including reducing grassy fuels and other vegetation that can support wildfires, while also providing habitat for wild herbivores on Department lands.

Comment 1-e: Cautions that goats may eat the bark of some tree species, resulting in the death of the tree. States that prescribed herbivory cannot address all fuels, and additional treatments may be needed for larger materials and high quantities of dead fuels.

Response 1-e: Sensitive trees and other species that are not targeted for grazing treatments will be protected by temporary fencing or other means that prevent the grazing animals from damaging them. The Department concurs that each project should be assessed on a case-by-case basis to determine the appropriate use of grazing for vegetation management on the site, which may include the initial use of goats or sheep followed by cattle, or other treatments to address larger materials and high quantities of dead fuels.

Comment 1-f: States that the Department should prepare appropriate CEQA documents to ensure full consideration of the environmental impacts and reasonable alternatives of each project before undergoing treatment.

Response 1-f: The Department will assess each targeted grazing project for potential impacts and will comply with CEQA requirements.

Star Creek Land Stewards Inc, September 23, 2024, written comment

Comment 2-a: Highly supports the addition of prescribed herbivory as a land management tool for CDFW. States that it is a necessary tool for the department to be able to deploy to manage state landscapes. States that it would be a significant improvement for staff to have a greater impact on the managed lands.

Response 2-a: Support for the proposed regulation is noted.

Comment 3-a: Commends CDFW's current implementation of traditional grazing treatments.

Response 3-a: Support for the Department's use of traditional grazing treatments is noted; those treatments will continue in the future as an important management tool.

Comment 3-b: Points out that both fuel reduction and increased native plant densities are benefits of traditional grazing, not just targeted grazing. States that traditional livestock grazing has been shown to support the success of native plant cover and drastically reduce fine fuels on grazed rangelands.

Response 3-b: The Department agrees that traditional grazing with cattle is an important and effective means of fuels reduction and native plant species enhancement and utilizes that method on tens of thousands of acres of Department-managed lands.

Comment 3-c: While CCF represents cattle producers, the foundation has no objection to the Department's proposal to explicitly authorize contracts with sheep and goat producers for targeted grazing activities.

Response 3-c: Lack of objection to the proposed regulation to explicitly authorize the Department to enter into contracts with sheep and goat producers for targeted grazing is noted.

Comment 3-d: CCF urges the Department to work with livestock producers and grazing experts across the state, such as University of California Cooperative Extension and representatives from the California Board of Forestry and Fire Protection's Rangeland Management Advisory Committee, to carefully assess whether certain vegetation is confirmed to be unpalatable to cattle or whether projects can be modified to ensure effective reduction of non-native vegetation by cattle.

Response 3-c: The Department will continue to work with the UC Cooperative Extension and CalFire's Rangeland Management Advisory Committee to refine grazing activities to maximize benefits.

Comment 3-e: States that while goat grazing may be ideal for grazing mature brome or cheatgrass, the Department ought to consider on a case-by-case basis whether early targeted grazing by cattle is appropriate, or whether maintenance through cattle grazing should be undertaken after initial intensive grazing of mature plants by another livestock species.

Response 3-e: The Department concurs that each project should be assessed on a case-by-case basis to determine the appropriate use of grazing for vegetation management on the site, which may include the initial use of goats or sheep followed by cattle on the same property.

Comment 3-f: States that the Department ought not to preclude cattle grazing as a targeted grazing treatment on any particular landscape merely due to the present of non-native species that may not be unpalatable to cattle. The Department should consider whether project modifications may be made that would render cattle grazing more economical or effective than

other livestock treatments, potentially favoring the Department to contract with a cattle producer for a given targeted grazing project.

Response 3-f: The Department concurs that each project should be assessed on a case-by-case basis to determine the appropriate use of grazing for vegetation management on the site, including the animal type used. The presence of non-native species on a site that are not palatable to cattle would not preclude targeted grazing by cattle.

Comment 3-g: CCF supports the Department's goal of utilizing grazing as a tool for managing state lands. States that the organization believes that targeted grazing can play a beneficial role in expanding grazed lands when used in conjunction with traditional grazing.

Response 3-g: Support for the proposed language is noted.

Laura Snell, University of California Cooperative Extension (UCCE), September 24, 2024, oral comment

Comment 4-a: Emphasizes that cattle should not be completely disregarded from this kind of service contract and that cattle are good at consuming fine fuels.

Response 4-a: The Department agrees that traditional grazing with cattle is an important and effective means of fuels reduction and native plant species enhancement and utilizes that method on tens of thousands of acres of Department-managed lands.

Comment 4-b: Suggests that CDFW (the Department) purchase virtual fencing materials, virtual fencing technology, and base towers similar to what the federal agencies are doing in the area.

Response 4-b: Pilot studies are currently underway which will test some of the new virtual fencing technology mentioned in the comment.

Comment 4-c: Expresses that colleagues are concerned with CEQA processing time for livestock grazing on CDFW lands and is concerned that this regulation may lengthen the process of CEQA for grazing even further.

Response 4-c: The Department will assess each targeted grazing project for potential impacts and will comply with CEQA requirements. Clarifying that goats and sheep may be used, in addition to cattle, for targeted grazing projects is not expected to impact CEQA processing time for individual projects.

Comment 4-d: Encouraged CDFW to review the scientific research on the topic of grazing around and directly in vernal pools, which can have positive effects on native vegetation and can ensure the vernal pools are deeper and larger for certain species.

Response 4-d: Department staff concur that cattle grazing can be compatible with vernal pool habitat, depending on the timing and intensity, among other factors.

Carl McCosker, Nevada County Sheep and Goat Grazer, September 24, 2024, oral comment

Comment 5-a: Supports CDFW's efforts to include sheep and goats.

Response 5-a: Support for the proposed language to include goats and sheep is noted.

Dalton Nichols, Lake Earl Grange Representative and Oklahoma State University Graduate Student, September 24, 2024, oral comment

Comment 6-a: States that the nonprofit he represents is looking for potential grant opportunities for management on public lands, since 80% of Del Norte County is owned by the state and some of the CDFW properties are overgrown with invasive species such as Himalayan berries and Roosevelt Elk. Asked what the process looks like for nonprofits to clean up these areas.

Response 6-a: The Department does not currently have a plan in place for grant opportunities but is supportive of the concept of working with non-profits to collaborate on funding opportunities for targeted grazing activities on Department-managed lands.

Cole Bush, Prescribed Grazing Operator and California Management Advisory Committee Member, September 24, 2024, oral comment

Comment 7-a: Supports the proposed language in the regulation.

Response 7-a: Support for the proposed language is noted.

## V. Description of Reasonable Alternatives to Regulatory Action

### (a) Alternatives to Regulation Change

No alternatives to the proposed regulatory change were identified or brought to the attention of Department staff that would have the same desired regulatory effect.

### (b) No Change Alternative

Without the proposed changes, the outstanding issues concerning the regulations currently governing the Department's ability to use prescribed herbivory as a tool would remain unaddressed.

### (c) Consideration of Alternatives

In view of information currently possessed, no alternative considered would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

### (d) Description of Reasonable Alternatives that Would Lessen Adverse Impact on Small Business

The Department does not anticipate any adverse impacts to small businesses from the proposed regulations, and thus no reasonable alternatives exist that would lessen the adverse impact from no adverse impact.

## VI. Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following 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

The Department does not anticipate that the proposed action will have any statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed changes clarify the Department's authority to enter into service contracts for vegetation treatment activities using prescribed herbivory for fuels reduction and/or habitat restoration purposes on Department-managed lands. This action will increase the opportunities for commercial herbivory providers and thus, will likely induce positive economic impacts.

(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

The Department does not anticipate adverse impacts on the creation or elimination of jobs within the state. The Department does not anticipate adverse impacts on the creation of new business, the elimination of existing businesses or the expansion of businesses in California. The proposed changes are to provide clarification of the Department's authority to enter into service contracts for vegetation treatment activities using prescribed herbivory for fuels reduction and/or habitat restoration purposes on Department-managed lands.

This regulatory change will likely increase the demand for goods and services related to prescribed herbivory that could positively impact job creation, induce the creation of new businesses, or the expansion of businesses in California. The Department does not anticipate any benefits to the health and welfare of California residents or to worker safety.

The Department anticipates benefits to the State's environment through improved procedures to support and expand fire resiliency work in diverse vegetation communities on Department lands across the state.

(c) Cost Impacts on a Representative Private 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 action.

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

The Department anticipates increases in expenditures for prescribed herbivory contracts that will remain within existing budgets and resources. No changes to costs or savings to other state agencies or in federal funding are anticipated. See STD 399 Addendum for more detail.

(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.

## Updated Informative Digest/Policy Statement Overview

Unless otherwise specified, all section references in this document are to Title 14 of the California Code of Regulations (CCR).

The Department is currently implementing traditional grazing treatments on approximately 80,000 acres per year, and seeks to increase that amount to reduce wildfire risk, improve habitat quality, and help meet statewide goals set by the Governor's Wildfire and Forest Resilience Task Force, EO N-82-20 (30X30 [Initiative](#)), and Natural and Working Lands Strategies. To date, over \$80 million in one-time funding has been allocated to the Department to expand fuels reduction treatments across the state. Acres treated and specific activities conducted must be reported on a bi-annual basis to the California Natural Resources Agency (CNRA) and is available for public review at [www.planscape.org](http://www.planscape.org). The Department and other state agencies are expected to quickly expand wildfire treatments to demonstrate the value of the substantial investment of one-time funds. Prescribed herbivory is a critical tool for treating the over 1.1 million acres of land the Department manages to reduce the risk of catastrophic wildfires.

While both targeted grazing and traditional livestock management use the same principles, they differ in their goals. Traditional livestock management is focused on sustainable livestock production and reproduction, whereas targeted grazing has a primary purpose of changing vegetation composition or structure. Targeted prescribed herbivory can provide both fuels reduction and desired ancillary benefits, such as increasing native plant densities and decreasing non-native species that might be unpalatable to cattle. The Department intends to utilize prescribed herbivory in different ways and conditions (e.g., number of animals, type of animals, timing, type of vegetation species grazed) than are typical under the current standard revenue-generating land use agreements. Goat and sheep grazers, for example, are usually paid to bring their animals onto a property. They will generally consume more target species than cows at a lower cost. These animals are also more suited to working in riparian areas, which is a focal habitat type for fuels reduction for the Department.

Multiple prescribed herbivory projects will be implemented and expanded statewide in the next 5-10 years. The clarified authority provided by the proposed regulatory amendments will expand the contracting mechanisms available to the Department to work with grazers who can provide prescribed herbivory services, including goat and sheep herders that can be directed to graze site in ways that reduces fuels fire risk and also provides benefits to native plants and wildlife.

In order to clarify authority and expand the contracting mechanisms available to the Department to work with grazers who can provide prescribed herbivory services, including goat and sheep herders, the Department proposes to add the following section:

Section 685. Prescribed Herbivory on Department Lands.

(a) For the purposes of vegetation fuels reduction or restoration of habitat, and for the benefit of the State, the department may enter into service contracts for prescribed herbivory treatments, including targeted grazing.

(b) Cattle, goats, and sheep may be used for prescribed herbivory treatments.

Benefit of the Regulations:



The Department anticipates that this regulation will have positive impacts on reducing wildfire fuel risks, while providing continued opportunities to increase native plant densities and decreasing non-native species, especially those that might be unpalatable to cattle. The Department intends to utilize prescribed herbivory in different ways and conditions (e.g., number of animals, type of animals, timing, type of vegetation species grazed) than are typical under the current standard revenue-generating land use agreements. The clarified authority provided by the proposed regulatory amendments will expand the contracting mechanisms available to the Department to work with grazers who can provide prescribed herbivory services, including goat and sheep herders that can be directed to graze site in ways that reduces fuels fire risk and also provides benefits to native plants and wildlife.

#### Consistency and Compatibility with Existing Regulations:

The Legislature, through Fish and Game Code Section 1010, has authorized the Department, by and with the approval of the Department of General Services, to sell grazing permits or otherwise dispose of excess vegetation or other products, produced on lands acquired by the Department. Additionally, Fish and Game Code Section 1501.5 provides authority to enter into contracts for fish and wildlife habitat preservation, restoration, and enhancement with public and private entities whenever the department finds that the contracts will assist in meeting the department's duty to preserve, protect, and restore fish and wildlife. The proposed regulations are neither inconsistent nor incompatible with existing state regulations in Title 14. The Department has searched the regulations in all other titles of California Code of Regulations and has found no other regulations that set forth the requirements in the Department's proposed regulation.

#### Update

**On October 11, 2024, the Director of the Department of Fish and Wildlife adopted the proposed addition of Section 685 of Title 14 of the California Code of Regulations as set forth in the attached Final Proposed Regulatory Language. There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Action.**

Final Proposed Regulatory Language

Section 685, Title 14 CCR, is added to read:

**§685. Prescribed Herbivory on Department Lands**

- (a) For the purposes of vegetation fuels reduction or restoration of habitat, and for the benefit of the State, the department may enter into service contracts for prescribed herbivory treatments, including targeted grazing.
- (b) Cattle, goats, and sheep may be used for prescribed herbivory treatments.

Note:

Authority: Fish and Game Code Section 1010

Reference: Fish and Game Code Section 1010 and 1501.5.