

Questions and Answers

1. When must I notify the Department?

Fish and Game Code section 1602 requires any person, state or local governmental agency, or public utility to notify the Department before beginning any activity that will do one or more of the following: 1) Substantially divert or obstruct the natural flow of any river, stream or lake; 2) substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake; or 3) deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake. Fish and Game Code section 1602 applies to all perennial, intermittent, and ephemeral rivers, streams, and lakes in the state. If you are not certain that your proposed activity requires notification, the Department recommends that you notify.

2. How do I notify the Department?

In order to notify the Department, a person, state or local governmental agency, or public utility must submit a complete notification package and fee to the Department regional office that serves the county where the activity will take place. The notification package is available from any Department regional office and the Department's website www.dfg.ca.gov/1600/notification_pkg.html. The fee schedule-section 699.5 in title 14 of the California Code of Regulations- is included in the notification package. The Department's regional offices and the counties they serve are listed in the notification package and on the Department's website at www.dfg.ca.gov/regions/regions.html.

3. What happens after I notify the Department?

After you notify the Department, the Department will determine whether your notification package is complete. The Department will make this determination within 30 calendar days of receiving the notification package if you are applying for a regular agreement (i.e., an agreement for a term of five years or less). If the notification package is incomplete, the Department will contact you and specify the information you need to provide to make it complete. The Department will not process your notification package until it receives the additional information. If your notification package is complete, the Department will process it as described below. The 30-day time period does not apply to notifications for long-term agreements (i.e., agreements for a term greater than five years).

After the Department receives a complete notification package, it will determine whether you will need a Lake or Streambed Alteration Agreement for your activity. An agreement will be required if the activity could substantially adversely affect an existing fish and wildlife resource. If an agreement is required, the Department will conduct an onsite inspection, if necessary, and submit a draft agreement to you. The draft agreement will include measures to protect fish and wildlife resources while conducting the project. If you are applying for a regular agreement, the Department will submit a draft agreement to you within 60 calendar days after your notification is complete. The 60-day time period will not begin until your notification is complete. The 60-day time period does not apply to notifications for long-term agreements.

After you receive the draft agreement, you will have 30 calendar days to notify the Department whether the measures in the draft agreement are acceptable. If you agree with the measures included in the draft agreement, you will need to sign the agreement and submit it to the Department. If you disagree with any measures in the draft agreement, you must notify the Department in writing and specify the measures that are not acceptable. Upon written request, the Department will meet with you within 14 calendar days of receiving the request to resolve the disagreement. If you fail to respond, in writing, within 90 calendar days of receiving the draft agreement, the Department may withdraw that agreement.

After the Department receives the signed draft agreement, it will make it final by signing it. However, the Department will not sign the agreement until it receives your notification fee and complies with the California Environmental Quality Act (Pub. Resources Code, § 21000, et seq.) (see "4" below). After you receive the final agreement, you may begin the project the agreement covers, provided you have obtained any other necessary local, state, and federal authorizations. If you disagree with any measures in the draft agreement and you and the Department cannot resolve the disagreement informally, you may request an arbitration panel to resolve the disagreement. If you request arbitration, a panel of arbitrators will be established within 14 calendar days of receiving the request. The panel will comprise three persons: your representative, a Department representative, and a third person mutually agreed upon by you and the Department who will serve as the panel's chair. If you and the Department cannot agree upon the third person within the 14-day period, a court will appoint the third person. The third person must have scientific expertise relevant to the fish and wildlife resources your project could affect and to the measures in the draft agreement that are in dispute. Each party will be required to pay the expenses of their selected representative and pay one-half the expenses of the third person. The panel will issue a decision within 14 days after it is established. The decision must be based on the best scientific information reasonably available at the time of the arbitration, and will be issued in the form of a final agreement. The decision will be binding on you and the Department unless you or the Department successfully petition a court to correct or vacate the decision.

The time periods described above may be extended at any time by mutual agreement. The notification package explains how to complete the notification package and the agreement process.

4. Does the Department need to comply with other state laws or regulations before issuing a Lake or Streambed Alteration Agreement?

Yes. The Department must comply with the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000, et seq.) before it may issue a final Lake or Streambed Alteration Agreement. Issuance of a final Lake or Streambed Alteration Agreement occurs after the Department receives a draft Lake or Streambed Alteration Agreement from the applicant and the Department signs it. In many instances, the Department will receive a signed draft Lake or Streambed Alteration Agreement from an applicant before the lead agency has fully complied with CEQA. In those instances, the Department must wait for the lead agency to fully comply with CEQA before it may sign the draft Lake or Streambed Alteration Agreement, thereby making it final.

Under CEQA, the "lead agency" is the local or state governmental agency that has the principal responsibility for carrying out or approving the activity. All other local or state agencies with discretionary approval authority are "responsible agencies."

The lead agency must determine first whether the activity is exempt from CEQA. If the activity is not exempt, the lead agency must prepare an environmental document, which will be a negative declaration, a mitigated negative declaration, or an environmental impact report. A lead agency is entitled to recover all of its CEQA-related costs from the applicant. If the Department acts as the lead agency for the activity your draft agreement covers, it will instruct you to submit an initial deposit to cover its initial CEQA-related costs. The deposit and any further CEQA-related costs will be in addition to your notification fee.

If the Department is a responsible agency, you must submit with your notification package a copy of any document prepared by the lead agency pursuant to CEQA, if one already has been prepared. You must also identify in your notification package the lead agency. Also, Fish and Game Code section 711.4 requires the lead agency to collect a fee on behalf of the Department whenever the lead agency prepares an environmental document, unless the activity is exempt

from the fee. Current CEQA fees are found in Fish and Game Code Section 711.4, available at www.leginfo.ca.gov/calaw.html.

For a detailed explanation of CEQA, you should consult the statute itself, the CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.) that implement CEQA, and CEQA handbooks and guides. CEQA and the CEQA Guidelines are available at www.ceres.ca.gov/planning.

5. Should I contact other governmental agencies regarding my proposed activity?

Depending on the activity you are proposing, in addition to a Lake or Streambed Alteration Agreement, you might need to obtain a permit, agreement, or other authorization from one or more governmental agencies. You should first contact your city and county planning departments to determine whether you need to obtain any local permits. The State and federal agencies listed below might also have permitting authority over your activity. You should contact these agencies if you are not familiar with their permitting requirements.

State agencies

- Coastal Commission
- Department of Conservation
- Department of Forestry
- Department of Water Resources
- Regional Water Quality Control Boards
- State Lands Commission
- State Water Resources Control Board

Federal agencies

- NOAA Fisheries
- U.S. Army Corps of Engineers
- U.S. Fish and Wildlife Service
- U.S. Forest Service

6. Do I need to notify the Department or obtain a Lake or Streambed Alteration Agreement for emergency work?

You do not need to notify the Department or obtain a Lake or Streambed Alteration Agreement before beginning the following emergency work: 1) immediate emergency work necessary to protect life or property; 2) immediate emergency repairs to public service facilities necessary to maintain service as a result of a disaster in an area in which the Governor has proclaimed a state of emergency; and 3) emergency projects undertaken, carried out, or approved by a state or local governmental agency to maintain, repair, or restore an existing highway, within the existing right of-way of the highway, that has been damaged as a result of fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, within one year of the damage. Although notification is not required before beginning the emergency work, you must notify the Department in writing within 14 days after beginning the work.