



California Natural Resources Agency
DEPARTMENT OF FISH AND GAME
Habitat Conservation Planning Branch
1416 9th Street, 12th Floor
Sacramento, CA 95814
www.dfg.ca.gov

ARNOLD SCHWARZENEGGER, Governor
DONALD KOCH, Director



August 10, 2009

Dear Interested Party:

The Department of Fish and Game (Department) is proposing to adopt a new schedule of fees it charges applicants for lake and streambed alteration agreements. The proposed fee schedule would replace the existing fee schedule in section 699.5 of title 14 of the California Code of Regulations. A copy of the notice regarding the Department's proposed regulatory action, which includes the proposed fee schedule, is enclosed for your review. The enclosed documents are also available on the Department's website at www.dfg.ca.gov. The Department filed the enclosed documents with the Office of Administrative Law on August 4, 2009. The notice will be published in the California Regulatory Notice Register on August 14, 2009.

As the Department explains in the notice, the Department needs to increase the fees it charges applicants to recover the total costs the Department incurs to administer and enforce Fish and Game Code section 1600 *et seq.*, as mandated by Fish and Game Code section 1609.

As the notice states, public comment period on the Department's proposed regulatory action closes at 5:00 p.m. on September 29, 2009. The Department will be holding a public hearing on September 29, 2009 from 9:30 a.m. to 11:30 a.m. in the first floor auditorium located at:

Natural Resources Building
1416 Ninth Street
Sacramento, CA 95814

If you have any questions or would like additional information regarding the Department's proposed regulatory action, please contact Gina Ford at the above address or by e-mail a gford@dfg.ca.gov.

Sincerely,

Kathleen Perry
Program Manager
Environmental Review & Permitting Program

Enclosures

Conserving California's Wildlife Since 1870

TITLE 14. DEPARTMENT OF FISH AND GAME
[Notice published August 14, 2009]

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Department of Fish and Game ("Department") proposes to amend its fee schedule for lake and streambed alteration agreements in section 699.5 in title 14 of the California Code of Regulations by adjusting the fees in the fee schedule for inflation in 2007, 2008, and 2009.

PUBLIC HEARING

The Department will conduct one public hearing regarding this proposed regulatory action. The hearing will be held on **September 29, 2009** from 9:30 a.m. to 11:30 a.m. at the 1st Floor Auditorium in The Resources Building located at 1416 Ninth Street in Sacramento, California. The Auditorium is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed regulatory action described below in the Informative Digest. The Department requests but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

AUTHORITY AND REFERENCE

Fish and Game Code sections 702 and 1609 authorize the Department to adopt the proposed amendments to the regulations described below in the Informative Digest. This regulation implements, interprets, or makes specific Fish and Game Code section 1609.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary

Fish and Game Code section 702 authorizes the Department to administer and enforce the provisions of the Fish and Game Code through regulations adopted by the Department. Fish and Game Code section 1609 authorizes the Department to charge fees to any entity subject to Fish and Game Code section 1600 *et seq.* in an amount necessary to pay the total costs the Department incurs in administering and enforcing Fish and Game Code section 1600 *et seq.*, including, but not limited to, preparing and submitting agreements and conducting inspections. The Department's existing fee schedule is in section 699.5 in title 14 of the California Code of Regulations ("fee schedule").

Fish and Game Code section 1609 also allows the Department to adjust the fee schedule pursuant to Fish and Game Code section 713. Fish and Game Code section

713, subdivision (b), requires the Department to annually adjust for inflation any fees it charges for licenses, stamps, permits, tags, or other entitlements issued by the Department. In doing so, the Department must use changes in the Implicit Price Deflator for State and Local Government Purchases of Goods and Services published by the United States Department of Commerce ("IPD") as the index to determine the annual rate of increase or decrease in the fees, referred to as the "index rate." (Fish & G. Code, § 713, subd. (a).) Fish and Game Code section 713, subdivision (c), allows the Department to recalculate the current fees charged for each license, stamp, permit, tag, or other entitlement issued by the Department that have not been increased each year since the 1985/86 fiscal year to determine that all appropriate indexing has been included in the current fees.

Purpose of Proposed Amendments

In November 2005, the Department repealed its then existing fee schedule and added a new fee schedule. In calculating the fees in the new fee schedule, the Department took the 2006 IPD into account. The Department has not amended the fee schedule since it was adopted in November 2005. As a result, in accordance with Fish and Game Code section 713, the Department proposes to amend the fee schedule by adjusting the fees in the schedule based on the IPD for 2007, 2008, and 2009.

The Department needs to adjust for inflation the fees in the fee schedule in order to recover the total costs it incurs to administer and enforce Fish and Game Code section 1600 *et seq.*, including, but not limited to, preparing and submitting agreements and conducting inspections in accordance with Fish and Game Code section 1609. If the Department does not adjust the fees, it will experience a budget shortfall that will affect its ability to administer and enforce Fish and Game Code section 1600 *et seq.*, the purpose of which is to protect and conserve the state's fish and wildlife resources. If because of the shortfall the Department had to eliminate positions in its Lake and Streambed Alteration Program, it would be even more difficult for the Department to meet that objective.

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

The Department has made the following initial determinations regarding its proposed regulatory action:

Mandates on local agencies and school districts: None.

Costs or savings to any state agency: Adoption of the proposed amendments will not result in any savings to any state agency, but will increase the cost to state agencies to obtain a lake or streambed alteration from the Department.

Cost to any local agency or school district which must be reimbursed in accordance with

Government Code sections 17500 et seq.: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None.

Cost impacts on a representative private person or business: Adoption of the proposed amendments to the fee schedule will increase the fees in the schedule by approximately 12%. The adjustment accounts for three years of inflation (2007, 2008, and 2009) and does not represent a significant increase over the existing fees.

Adoption of the proposed amendments to the fee schedule will not:

- (1) create or eliminate jobs within California;
- (2) create new businesses or the eliminate existing businesses within California;
or
- (3) affect the expansion of businesses currently doing business within California.

Business reporting requirement: None.

Small Business Determination: The Department has determined that adoption of the proposed amendments to the fee schedule would affect small businesses that need a lake or streambed alteration agreement by increasing the cost of obtaining one by approximately 12%. However, the Department does not consider the cost increase significant.

Significant effect on housing costs: None.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no alternative it considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the regulatory action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulatory action.

The Department invites interested person to present statements or arguments with respect to alternatives to the proposed regulatory action at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the proposed regulatory action may be directed to:

Gina Ford
1416 Ninth Street, Suite 1260
Sacramento, California 95814
(916) 651-7821
gford@dfg.ca.gov

The backup contact person for inquiries is:

Cathie Vouchilas
1416 Ninth Street
Sacramento, California 95814
(916) 651-1190
cvouchilas@dfg.ca.gov

Please direct requests for copies of the proposed text of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Ms. Ford at the above mailing or email address.

WRITTEN COMMENT PERIOD

Any interested persons may submit written comments relevant to the proposed regulatory action to the Department. The comment period closes at **5:00 p.m. on September 29, 2009**. The Department will consider only comments received at the Department's headquarters by that time. Please submit comments to Gina Ford at her above mailing or email address.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department has prepared an Initial Statement of Reasons for its proposed regulatory action, has available all the information upon which its proposal is based, and has available the express terms of the proposed regulatory action. The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its headquarters at the above address. As of the date this notice is published in the California Regulatory Notice Register, the rulemaking file consists of this notice, the text of the proposed amendments to the fee schedule, and the Initial Statement of Reasons. Copies may be obtained by contacting Gina Ford at her mailing or email address or telephone number above.

AVAILABILITY OF THE CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Department may adopt the proposed amendments substantially as described in this notice. If the Department makes changes 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 text as revised. This requirement will not apply if the change is (1) nonsubstantial or solely grammatical in nature, or (2) sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action. Please send requests for copies of any modified regulations to Gina Ford at her mailing or email address or telephone number above.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, a copy of the Department's Final Statement of Reasons may be obtained by contacting Gina Ford at her mailing or email address or telephone number above.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of this notice, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout in addition to any other documents that that will be part of the Department's rulemaking file can be accessed through the Department's website at www.dfg.ca.gov.

**TITLE 14. DEPARTMENT OF FISH AND GAME
PROPOSED AMENDMENTS TO REGULATIONS**

§ 699.5. Fees for Lake and Streambed Alteration Agreements.

(a) Definitions.

(1) For purposes of this section, the following definitions apply:

(A) "Activity" means any activity that by itself would be subject to subdivision (a) of section 1602 of the Fish and Game Code.

(B) "Agreement" means a lake or streambed alteration agreement issued by the department.

(C) "Agreement for routine maintenance" means an agreement that: (1) covers only multiple routine maintenance projects that the entity will complete at different time periods during the term of the agreement; and (2) describes a procedure the entity must follow for any maintenance projects the agreement covers.

(D) "Agreement for timber harvesting" means an agreement of five years or less that covers one or more projects that are included in a timber harvesting plan approved by the California Department of Forestry and Fire Protection.

(E) "Department" means the California Department of Fish and Game.

(F) "Extension" means either a renewal of an agreement executed prior to January 1, 2004, or an extension of an agreement executed on or after January 1, 2004.

(G) "Master agreement" means an agreement with a term of greater than five years that: (1) covers multiple projects that are not exclusively projects to extract gravel, sand, or rock; not exclusively projects that are included in a timber harvesting plan approved by the California Department of Forestry and Fire Protection; or not exclusively routine maintenance projects that the entity will need to complete separately at different time periods during the term of the agreement; and (2) describes a procedure the entity must follow for construction, maintenance, or other projects the agreement covers.

An example of a project for which the department would issue a master agreement is a large-scale development proposal comprised of multiple projects for which specific, detailed design plans have not been prepared at the time of the original notification. The master agreement will specify a process the department and entity will follow before each project begins and may identify various measures the entity will be required to incorporate as part of each project in order to protect fish and wildlife resources. As a general rule, the process specified in the master agreement will require the entity to notify the department before beginning any project the agreement covers and submit a fee based on the cost of the project. After the department receives the notification, it will confirm that the master agreement covers the project and propose measures to protect fish and wildlife resources in addition to any included in the master agreement, if such measures are necessary for the specific project. A master agreement will typically, but not always, encompass one or more watersheds and/or relate to a habitat conservation plan or natural community conservation plan. By contrast, if the large-scale development proposal is comprised of, for example, multiple residences, golf courses, and associated infrastructure projects for which specific, detailed design plans have been prepared by the time the entity notifies the department and the entity is ready to begin those projects, the department would issue the entity a standard agreement.

(H) "Master agreement for timber operations" means an agreement with a term of greater than five years that: (1) covers timber operations on timberland that are not

exclusively projects to extract gravel, sand, or rock; not exclusively projects that are included in a timber harvesting plan approved by the California Department of Forestry and Fire Protection; or not exclusively routine maintenance projects that the entity will need to complete separately at different time periods during the term of the agreement; and (2) describes a procedure the entity must follow for construction, maintenance, or other projects the agreement covers. For the purposes of this definition, "timberland" and "timber operations" have the same meaning as those terms are defined in sections 4526 and 4527 of the Public Resources Code, respectively.

(I) "Project" means either of the following as determined by the department:

1. One activity. An example of such a project is one that is limited to the removal of riparian vegetation at one location along the bank of a river, lake, or stream that will substantially change the bank.

2. Two or more activities that are interrelated and could or will affect similar fish and wildlife resources. An example of such a project is the construction of one bridge across a stream that requires the removal of riparian vegetation, the installation of abutments in or near the stream, and the temporary de-watering of the stream using a diversion structure. Each of those three activities together would constitute one project for the purpose of calculating the fee under this section because they are all related to the single purpose of constructing one bridge at one location. By contrast, the construction of three bridges and two culverts across a stream at five different locations would not constitute one project, but instead would constitute five projects, even if each structure were to provide access to a common development site and/or were physically connected to each other by a road.

"Project" does not mean project as defined in section 21065 of the Public Resources Code or section 15378 of title 14 of the California Code of Regulations.

(J) "Standard agreement" means any agreement other than an agreement for gravel, rock, or sand extraction, an agreement for timber harvesting, an agreement for routine maintenance, a master agreement, or a master agreement for timber operations.

(b) Standard Agreement.

(1) Fee if the term of the agreement is 5 years or less:

(A) ~~\$200~~\$224.00 if the project costs less than \$5,000.

(B) ~~\$250~~\$280.25 if the project costs from \$5,000 to less than \$10,000.

(C) ~~\$500~~\$560.25 if the project costs from \$10,000 to less than \$25,000.

(D) ~~\$750~~\$840.25 if the project costs from \$25,000 to less than \$100,000.

(E) ~~\$1,100~~\$1,233.25 if the project costs from \$100,000 to less than \$200,000.

(F) ~~\$1,500~~\$1,673.00 if the project costs from \$200,000 to less than \$350,000.

(G) ~~\$2,250~~\$2,521.50 if the project costs from \$350,000 to less than \$500,000.

(H) ~~\$4,000~~\$4,482.75 if the project costs \$500,000 or more.

(2) Fee if the term of the agreement is longer than 5 years:

(A) ~~\$2,400~~\$2,689.50 base fee, plus the fee specified in subdivision (b), paragraph

(1).

(3) For the purpose of this subdivision, project cost means the cost to complete each project for which notification is required.

(4) As a general rule, a notification for a standard agreement should identify only one project. If an entity chooses to identify more than one project in a single notification, the department may require the entity to separately notify the department for one or more of the projects included in the original notification based on their type or location. If the notification includes more than one project, the fee shall be calculated by adding the

separate fees for each project. For example, if a notification identifies three projects, one of which will cost less than \$5,000 to complete, one of which will cost \$7,500 to complete, and one of which will cost \$17,500 to complete, the fee for the first project would be ~~\$200~~\$224.00, the fee for the second project would be ~~\$250~~\$280.25, and the fee for the third project would be ~~\$500~~\$560.25. Hence, the total fee the entity would need to submit with the notification that identifies those three projects would be ~~\$950~~\$1,064.50.

(5) An entity may not obtain a standard agreement for any project identified in the notification that qualifies for an agreement for gravel, rock, or sand extraction, an agreement for timber harvesting, an agreement for routine maintenance, a master agreement, or a master agreement for timber operations unless the department agrees otherwise.

(6) Fee submittal:

(A) If the entity requests an agreement with a term of 5 years or less, the fee specified in paragraph (1) must be submitted with the notification.

(B) If the entity requests an agreement with a term longer than 5 years, the fee specified in paragraph (2) must be submitted with the notification.

(c) Agreement for Gravel, Sand, or Rock Extraction.

(1) Fee if the term of the agreement is 5 years or less:

(A) ~~\$500~~\$560.25 if the annual extraction volume identified in the notification is less than 500 cubic yards.

(B) ~~\$1,000~~\$1,120.50 if the annual extraction volume identified in the notification is 500 to less than 1,000 cubic yards.

(C) ~~\$2,500~~\$2,801.75 if the annual extraction volume identified in the notification is 1,000 to less than 5,000 cubic yards.

(D) \$5,000 if the annual extraction volume identified in the notification is 5,000 or more cubic yards.

(2) Fee if the term of the agreement is longer than 5 years:

(A) ~~\$10,000~~\$11,206.75 base fee, plus an annual fee of ~~\$1,000~~\$1,120.50.

(3) Fee submittal:

(A) If the entity requests an agreement with a term of 5 years or less, the fee specified in paragraph (1) must be submitted with the notification.

(B) If the entity requests an agreement with a term longer than 5 years, the base fee specified in paragraph (2) must be submitted with the notification.

(d) Agreement for Timber Harvesting.

(1) Fee:

(A) ~~\$1,200~~\$1,345.25 base fee, plus ~~\$100~~\$112.00 for each project.

(2) Fee submittal:

(A) The fee specified in paragraph (1) must be submitted with the notification.

(e) Agreement for Routine Maintenance.

(1) Fee if the term of the agreement is 5 years or less:

(A) ~~\$1,200~~\$1,345.25 base fee, plus ~~\$100~~\$112.00 for each maintenance project completed per calendar year.

(2) Fee if the term of the agreement is longer than 5 years:

(A) ~~\$2,400~~\$2,689.50 base fee, plus ~~\$100~~\$112.00 for each maintenance project completed per calendar year.

(3) Fee submittal:

(A) If the entity requests an agreement with a term of 5 years or less, the base fee

specified in paragraph (1) at a minimum must be submitted with the notification.

(B) If the entity requests an agreement with a term longer than 5 years, the base fee specified in paragraph (2) at a minimum must be submitted with the notification.

(f) Master Agreement.

(1) Fee:

(A) ~~\$30,000~~\$33,620.25 base fee, plus:

1. An annual fee of ~~\$2,500~~\$2,801.50, unless the department specifies otherwise.

2. ~~\$250~~\$280.25 for each project the agreement covers, unless the department specifies otherwise.

(2) Fee submittal:

(A) The base fee specified in paragraph (1) at a minimum must be submitted with the notification.

(g) Master Agreement for Timber Operations.

(1) Fee:

(A) ~~\$7,500~~\$8,404.75 base fee, plus:

1. An annual fee of ~~\$1,000~~\$1,120.50, unless the department specifies otherwise.

2. ~~\$400~~\$112.00 for each project the agreement covers, unless the department specifies otherwise.

(2) Fee submittal:

(A) The base fee specified in paragraph (1) at a minimum must be submitted with the notification.

(h) If an entity chooses to identify more than one project in a single notification, the total fee may exceed \$5,000 regardless of the term of the agreement.

(i) Extensions for Agreements.

(1) Fee:

(A) ~~\$200~~\$224.00.

(2) Fee submittal:

(A) The fee specified in paragraph (1) must be submitted with the request for an extension.

(3) For the purpose of this subdivision and subdivisions (j) and (k), an extension is not an amendment.

(j) Minor Amendments.

(1) Fee:

(A) ~~\$150~~\$168.00.

(B) For the purpose of this subdivision, a minor amendment is one that would not significantly modify the scope or nature of any project covered by the agreement or any measure included in the agreement to protect fish and wildlife resources.

(k) Major Amendments.

(A) ~~\$500~~\$560.25.

(B) For the purpose of this subdivision, a major amendment is one that would significantly modify the scope or nature of any project covered by the agreement or any measure included in the agreement to protect fish and wildlife resources, or require additional environmental review pursuant to section 21000 *et seq.* of the Public Resources Code or section 15000 *et seq.* of title 14 of the California Code of Regulations.

(C) A project may not be added to an agreement by amendment unless the agreement specifies otherwise.

(l) California Environmental Quality Act ("CEQA").

(1) When the department is required to act as lead agency in administering or enforcing sections 1600–1616 of the Fish and Game Code, the department may charge and collect a reasonable fee from the entity to recover its estimated CEQA-related costs in accordance with section 21089 of the Public Resources Code. The department may recover its estimated CEQA-related costs by collecting from the entity one or more deposits. The amount of the first deposit shall be at least \$1,500. The department shall refund any unused deposit to the entity.

(m) Payment of Fees.

(1) The department may refuse to process a notification or a request for an extension or amendment until the department receives the proper fee or fees.

(n) Refunds.

(1) If an entity requests an agreement with a term longer than 5 years and the department denies the entity's request, the department will return the fees paid and instruct the entity to submit the applicable fee for an agreement with a term of 5 years or less.

(2) If after receiving a notification the department determines that notification is not required because the project is not subject to subdivision (a) of section 1602 of the Fish and Game Code, the department shall refund to the entity any fees submitted with the notification.

NOTE: Authority cited: Section 1609, Fish and Game Code. Section 21089, Public Resources Code. Reference: Section 1609, Fish and Game Code. Section 21089, Public Resources Code.