

## STAFF SUMMARY FOR DECEMBER 14-15, 2022

**22. REGULATORY CHANGE PETITIONS (WILDLIFE)****Today's Item****Information** ☐**Action** ☒

This is a standing agenda item for FGC to receive new regulation change petitions and act on regulation change petitions received from the public at previous meetings. For this meeting:

- (A) Receive new petitions for regulation change
- (B) Act on previously received petitions for regulation change

**Summary of Previous/Future Actions****(A) *New Petitions for Regulation Change – Receipt***

- **Today receive new petitions** **Dec 14-15, 2022; San Diego**
- **Potentially act on new petitions** **Feb 8-9, 2023; Sacramento**

**(B) *Regulation Change Petitions – Scheduled for Action***

- **Received new petitions** **Oct 12-13, 2022; Kings Beach**
- **Today's potential action on petitions** **Dec 14-15, 2022; San Diego**

**Background****(A) *Receipt of new petitions for regulation change***

Pursuant to Section 662, any person requesting that FGC adopt, amend, or repeal a regulation must complete and submit form FGC 1. Regulation change petition forms submitted by the public are received at this FGC meeting under (A) if they are delivered by the comment deadline (included in meeting materials) or by the supplemental comment deadline.

Under the Bagley-Keene Open Meeting Act, FGC cannot discuss or take action on any matter not included on the agenda, other than to schedule issues raised by the public for consideration at future meetings. Thus, petitions for regulation change generally follow a two-meeting cycle (receipt and direction); FGC will determine the outcome of the petitions for regulation change received at today's meeting at the next regularly scheduled FGC meeting (currently Feb 8-9, 2023) under (B), following staff evaluation, unless the petition is rejected under 10-day staff review as prescribed in subsection 662(b).

FGC received one new petition by the comment deadline; the petition is summarized in Exhibit A1, and the petition is provided as Exhibit A2.

**(B) *Action on previously-received petitions for regulation change***

Petitions received at the previous meeting are scheduled for FGC consideration at the next regularly scheduled business meeting under (B). A petition may be (1) denied, (2) granted, or (3) referred to a committee, staff, or DFW for further evaluation or information-gathering. Referred petitions are scheduled for action once the evaluation is completed and a recommendation made.

## STAFF SUMMARY FOR DECEMBER 14-15, 2022

For today, two wildlife and inland fisheries petitions are scheduled for action:

- I. *Petition 2021-007*: Request to revise authorized methods of take and designation for wild pig (Exhibit B2)
- II. *Petition 2022-16*: Request to prohibit waterfowl hunting at Lake Earl Wildlife Area (Del Norte County) (Exhibit B3)

Staff recommendations and rationales, developed with input from DFW staff, are provided in Exhibit B1.

### Significant Public Comments

1. The petitioner for Petition 2021-007 submits comments in response to DFW's Oct update on the petition, underscoring and supporting the request to regulate the caliber of BB devices (Exhibit B4).
2. The Del Norte County Board of Supervisors opposes both elements of Petition 2022-16. The board supports waterfowl hunting as a means of supporting conservation efforts, finds the petition's claims to be without support or evidence, and states that the second request to "replace county operated Lake Earl breaching practice with a solar powered aqueduct" is outside the authority of FGC (Exhibit B5).
3. Del Norte Waterfowlers opposes Petition 2022-16, questioning its factual basis. The organization states that the area is subject to noise from other sources, has a long history of waterfowl hunting, and is the only remaining public area available to waterfowl hunters in the county (Exhibit B6).
4. A waterfowl hunter opposes Petition 2022-16, citing limited opportunity in Del Norte County and stating that if some hunters were acting unethically, they would have been turned in by others (Exhibit B7).

### Recommendation

**FGC staff:** Defer action on Petition 2021-007 until the Feb 2023 FGC meeting, and deny Petition 2022-16 for the reasons set forth in Exhibit B1.

### Exhibits

- A1. [Summary of new petitions for regulatory change received through Dec 1, 2022](#)
- A2. [Petition 2022-18, received Nov 10, 2022](#)
- B1. [Summary of non-regulatory requests and staff recommendations for requests scheduled for action, updated Dec 7, 2022](#)
- B2. [Petition 2021-007, received Mar 10, 2021](#)
- B3. [Petition 2022-16, received Sep 19, 2022](#)
- B4. [Emails from Colin Gallagher, received Oct 13 through Oct 14, 2022](#)
- B5. [Letter from Garry Hemmingsen, Chair, Del Norte County Board of Supervisors, received Nov 21, 2022](#)
- B6. [Letter from Jeff Reed, Del Norte Waterfowlers, received Nov 23, 2022](#)
- B7. [Email from Sebastian Garcia, received Nov 30, 2022](#)

STAFF SUMMARY FOR DECEMBER 14-15, 2022

**Motion**

Moved by \_\_\_\_\_ and seconded by \_\_\_\_\_ that the Commission adopts the staff recommendations, reflected in Exhibit B1, to defer action on petition 2021-007 and deny petition 2022-16.

**OR**

Moved by \_\_\_\_\_ and seconded by \_\_\_\_\_ that the Commission adopts the staff recommendations as reflected in Exhibit B1, except for item(s) \_\_\_\_\_ for which the action is \_\_\_\_\_.

## CALIFORNIA FISH AND GAME COMMISSION

### RECEIPT LIST FOR PETITIONS FOR REGULATION CHANGE: RECEIVED BY 5:00 PM ON DECEMBER 1, 2022

FGC - California Fish and Game Commission   DFW - California Department of Fish and Wildlife   WRC - Wildlife Resources Committee   MRC - Marine Resources Committee

Tracking No.	Date Received	Name of Petitioner	Subject of Request	Short Description	FGC Receipt Scheduled	FGC Action Scheduled
2022-18	11/10/2022	John Burk	Game hunting: Deer season	Request to delay season start dates for Zones D-8, D-9 & D-10 to first Saturday in October.	12/14-15/2022	2/8-9/2023



Tracking Number: ( \_2022-18\_ )

To request a change to regulations under the authority of the California Fish and Game Commission (Commission), you are required to submit this completed form to: California Fish and Game Commission, (physical address) 1416 Ninth Street, Suite 1320, Sacramento, CA 95814, (mailing address) P.O. Box 944209, Sacramento, CA 94244-2090 or via email to FGC@fgc.ca.gov. Note: This form is not intended for listing petitions for threatened or endangered species (see Section 670.1 of Title 14).

Incomplete forms will not be accepted. A petition is incomplete if it is not submitted on this form or fails to contain necessary information in each of the required categories listed on this form (Section I). A petition will be rejected if it does not pertain to issues under the Commission's authority. A petition may be denied if any petition requesting a functionally equivalent regulation change was considered within the previous 12 months and no information or data is being submitted beyond what was previously submitted. If you need help with this form, please contact Commission staff at (916) 653-4899 or FGC@fgc.ca.gov.

## **SECTION I: Required Information.**

*Please be succinct. Responses for Section I should not exceed five pages*

### **1. Person or organization requesting the change (Required)**

Name of primary contact person: JOHN BURK

Address: [REDACTED]

Telephone number: [REDACTED]

Email address: [REDACTED]

### **2. Rulemaking Authority (Required) - Reference to the statutory or constitutional authority of the Commission to take the action requested: Fish & Game Code 203 (a)**

### **3. Overview (Required) - Summarize the proposed changes to regulations: I am proposing adjusting the deer hunting season in zones D-8,9, & 10 by making the following change to:**

[Section 360, Title 14, CCR](#) (Deer)

A, B, C, and D Zone Hunts.

Under D Zone sections (7), (8), & (9), and under the (B) season section of each: PROPOSE:

(B) Season: The season in Zone D-8, D-9 & D-10 shall open on the **first Saturday in October** and extend for 30 consecutive days.

### **4. Rationale (Required) - I have hunting in Southern California (Kern County) for 50 years and it has become obvious to all in this region the climate has been changing and fall temperatures are staying warmer longer into the year, making October of 2022 much like September of 2002. Temperatures, as I am sure you are aware, drastically affect deer migration and interaction behavior. We, in Kern County and specifically zones D-8, 9, & 10, are not seeing legal huntable bucks until late October/early November, after the legal hunting season ends, this year on October 23. In 2021 the deer tags issued total 8305 for the three (3) zones, the total reported bucks harvested in those same zones was 518 or**



a 6% buck success rate. That success rate is very low even if some bucks were not reported. The change I propose would align the actual weather season with the hunting season of years past in this warm and more southern zone of California and help raise the success rate for paying hunters.

## SECTION II: Optional Information

5. **Date of Petition:** 11-09-2022

6. **Category of Proposed Change**

- ☐ Sport Fishing  
☐ Commercial Fishing  
☒ Hunting  
☐ Other, please specify: [Click here to enter text.](#)

7. **The proposal is to:** *(To determine section number(s), see current year regulation booklet or <https://govt.westlaw.com/calregs>)*

- ☐ Amend Title 14 Section(s) [Section 360, Title 14, CCR](#)  
☐ Add New Title 14 Section(s): [Click here to enter text.](#)  
☐ Repeal Title 14 Section(s): [Click here to enter text.](#)

8. **If the proposal is related to a previously submitted petition that was rejected, specify the tracking number of the previously submitted petition** [Click here to enter text.](#)

Or ☒ Not applicable.

9. **Effective date:** If applicable, identify the desired effective date of the regulation.  
If the proposed change requires immediate implementation, explain the nature of the emergency: 06/15/2023

10. **Supporting documentation:** Identify and attach to the petition any information supporting the proposal including data, reports and other documents: 2021 DEER HARVEST REPORTS ZONE D

11. **Economic or Fiscal Impacts:** Identify any known impacts of the proposed regulation change on revenues to the California Department of Fish and Wildlife, individuals, businesses, jobs, other state agencies, local agencies, schools, or housing: NONE

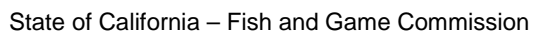
12. **Forms:** If applicable, list any forms to be created, amended or repealed:

[Click here to enter text.](#)

## SECTION 3: FGC Staff Only

Date received: 11/10/2022

FGC staff action:



## FGC 1 (Rev 06/19) Page 3 of 3

- Tracking Number

Meeting date for FGC consideration: Feb 8-9, 2023

Tracking Number

- ☐
- Granted for consideration of regulation change

# **CALIFORNIA FISH AND GAME COMMISSION PETITIONS FOR REGULATION CHANGE - ACTION ON DECEMBER 14-15, 2022**

FGC - California Fish and Game Commission    DFW - California Department of Fish and Wildlife    WRC - Wildlife Resources Committee    MRC - Marine Resources Committee

Grant: FGC is willing to consider the petitioned action through a process    Deny: FGC is not willing to consider the petitioned action    Refer: FGC needs more information before the final decision

Tracking No.	Date Received	Name of Petitioner	Subject of Request	Short Description	FGC Receipt	FGC Initial Action Date	Initial Staff Recommendation	Referral Date	Referred to	Final Staff Recommendation
2021-007	5/10/2021	Colin Gallagher	Wild pig	Request to revise authorized methods of take and designation for wild pig	6/15-16/2021	8/18/2021	REFER to DFW for review and recommendation the portions of the petition that are within FGC's authority. (a) REFER for inclusion in DFW's	8/18/2021	DFW	Defer action on the petition until the February 2022 Commission meeting.
2022-16	9/19/2022	Randal South	Waterfowl hunting: Prohibit hunting at Lake Earl Wildlife Area	Request to (1) ban waterfowl hunting at Lake Earl Wildlife Area as petitioner asserts both that hunting occurs within 150 yards of human habitation and hunters on the area are leaving waterfowl that have been killed; and (2) direct DFW to replace the county-operated breaching practice at Lake Earl with a solar powered aqueduct.	10/12-13/22	12/14-15/22	DENY: (1) California Fish and Game Code Section 3004 prohibits hunting or discharging a firearm or other deadly weapon while hunting within 150 yards of an occupied dwelling, and Fish and Game Code Section 4304 prohibits leaving through carelessness or neglect any game bird which is in the hunter's possession. The prohibitions already address the described conduct and DFW has been made aware of the concerns raised in the petition. (2) Neither FGC nor its staff have oversight over the administration of DFW; DFW is aware of the request.			





Tracking Number: (\_2021-007\_)

To request a change to regulations under the authority of the California Fish and Game Commission (Commission), you are required to submit this completed form to: California Fish and Game Commission, (physical address) 1416 Ninth Street, Suite 1320, Sacramento, CA 95814, (mailing address) P.O. Box 944209, Sacramento, CA 94244-2090 or via email to FGC@fgc.ca.gov. Note: This form is not intended for listing petitions for threatened or endangered species (see Section 670.1 of Title 14).

Incomplete forms will not be accepted. A petition is incomplete if it is not submitted on this form or fails to contain necessary information in each of the required categories listed on this form (Section I). A petition will be rejected if it does not pertain to issues under the Commission's authority. A petition may be denied if any petition requesting a functionally equivalent regulation change was considered within the previous 12 months and no information or data is being submitted beyond what was previously submitted. If you need help with this form, please contact Commission staff at (916) 653-4899 or FGC@fgc.ca.gov.

## **SECTION I: Required Information.**

*Please be succinct. Responses for Section I should not exceed five pages*

### **1. Person or organization requesting the change (Required)**

Name of primary contact person: Colin Gallagher

Address: [REDACTED]

Telephone number: [REDACTED]

Email address: [REDACTED]

### **2. Rulemaking Authority (Required) - Reference to the statutory or constitutional authority of the Commission to take the action requested:**

~~The Fish and Game Commission's regulatory process is governed by the California Administrative Procedure Act (APA). APA is a series of acts of the California Legislature, first enacted June 15, 1945. Chapter 3.5 of the APA requires California State agencies to adopt regulations in accordance with its provisions.~~

~~The Commission is the proper entity to review and act upon proposed changes to Fish and Game regulations. The interpretations and changes requested in this case have first been sent to staff for review and were also sent as a timely public comment on the May 11, 2021 Wildlife Resources Committee agenda item 4(a) – Discuss Potential Regulatory Options for 2021-2022 Seasons for Mammal Hunting. My comments are now sent to the Commission as a request (petition) for interpretation and change to regulations, after first having asked the Wildlife Resources Committee to recommend my proposals to the full Commission.~~

Authority cited: Sections 200, 203 and 265, Fish and Game Code, and in context of the proposal, note in particular Sections 200(a), 203(d), and 265 of Fish and Game Code. (Reference: Sections 2005, 2055, 3004.5 and 3950, Fish and Game Code.)

Authority for Commission to enact changes to California Code of Regulations Title 14, Section 353 (for 14 CCR § 353 subsection (c), 14 CA ADC § 353 subsection (c))

### **3. Overview (Required) - Summarize the proposed changes to regulations:**



There should be rendered by the Commission an interpretation of Mammal Hunting Regulations §353. Methods Authorized for Taking Big Game subsection (c) so that it will be considered to be legal to utilize a BB device for hunting wild pig in California, so long as the BB device is at least .40 caliber in designation, or larger.

My second request is that the Commission alter the .40 caliber minimum designation formally to .30 minimum (whether for rifle centerfire, muzzleloader, or BB device) in 353(c).

Alternatively, the Commission could make a change that would require .357 caliber minimum for BB devices to hunt wild boar (this would not alter any California lead free regulations), and clarify that hunting boar with centerfire cartridges with softnose or expanding projectiles of .30 caliber or greater in designation is permitted (lead free would still be required as the law currently requires if we are using centerfire rounds).

My third request is distinct than my first and second and should be evaluated separately. This request is for an actual change, not an interpretation. This request, for a change in Mammal Hunting Regulations, is simply to remove wild pig (feral pigs, European wild pigs, and their hybrids (genus *Sus*)) from Big Game as defined in the Mammal Hunting Regulations at §350. I request that the Commission agendaize this change for discussion then finalize the change.

See also previous legislation on the matter from 2017 - 2018 (AB 2805):

[https://leginfo.legislature.ca.gov/faces/billStatusClient.xhtml?bill\\_id=201720180AB2805](https://leginfo.legislature.ca.gov/faces/billStatusClient.xhtml?bill_id=201720180AB2805)

#### **4. Rationale (Required) -**

item 1 rationale.

Currently it is not legal to hunt boar with a BB device in California. However, it is legal to own BB devices in California, and is legal to hunt with them for some animals in California such as turkey. It is legal in many other States to hunt boar with what are called "big bore airguns," which would be as proposed by this comment, BB devices as defined in law by California, with the caveat that the interpretation would require that the caliber equivalent for BB devices to be used on wild boar be .40 caliber in designation or larger.

This would not circumvent any hunter safety requirement, hunter license, or tag requirement in California, as all these laws still exist and would need to be followed regardless.

item 2 rationale.

to allow formally for flexibility of ammunition in the highly constrained market of lead-free products, ranging from .308 down to 7.62x39. This is due to the current language of 353(c) of Fish and Game Code which reads, "(c) Except for the provisions of the following subsections (d) through (j), big game may only be taken by rifles using centerfire cartridges with softnose or expanding projectiles; bow and arrow (see Section 354 of these regulations for archery equipment regulations); or wheellock, matchlock, flintlock or percussion type, including "in-line" muzzleloading rifles using black powder or equivalent black powder substitute, including pellets, with a single projectile loaded from the muzzle and at least .40 caliber in designation" - Currently the language of this provision appears flexible on centerfire cartridges but should be rewritten to expand the flexibility to allow for "centerfire, muzzleloader, and BB device" including any wheellock, matchlock, flintlock, or percussion type or "in-line" muzzleloaders as the case may be, to allow for use of those instruments to hunt big game with .30 caliber minimum designation. In the market, as some examples, the Airforce Texan BB device (big bore airgun) is available in .30, .357, and .45; the Benjamin Bulldog BB device is available in



.357, and the Umarex Hammer, a BB device (big bore airgun) can deliver three .50 caliber rounds one after the other. In the case of BB devices, California law does not require lead-free ammunition (though a few BB device users have explored it), in the case of firearms, it remains required when hunting.

The 7.62x39 round, one of which is perfectly suitable to take down a boar with (example: 7.62X39 RUSSIAN 123GR DT LEAD FREE SC-HP, 2400fps - 1574 ft./lbs), is roughly equivalent to a 30-30 and is essentially a .30 caliber round (7.85–7.9 mm (0.309–0.311") SAAMI 7.92 mm (0.312") CIP). The .308 Winchester, often used on big game, is (0.308" (7.8 mm)). The 7.62x54mmR, used by many in North America today who are owners of Mosin-Nagant bolt-action rifles, is the largest of the three ammunition types mentioned here, and the 7.62x39mm is the smallest cartridge in terms of case length, overall length, rim diameter, and case capacity. However, the 7.62x39 and 7.62x54mmR both have the same bullet diameter. 7.62x39mm factory loads typically use bullet weights in the 120-125 grain range, with 122 and 123 grain bullets being the most common. 7.62x54R factory loads most often use 147-203 grain bullets and 148, 150, and 180 grain bullets are the most popular. Finally, typical .308 Winchester factory loads use bullets in the 110-180 grain range. 150 grain, 165 grain, 168 grain, and 180 grain bullets are the most common. However, all of this ammunition in centerfire is very hard to find (normally out of stock for months) if you are looking for lead-free.

item 3 rationale.

The numbers of wild pigs are exceedingly high, there is damage from the growth of non-native species, and removing them from big game rules at §350 would help encourage more hunters to get back into the field.

## **SECTION II: Optional Information**

**5. Date of Petition: May 10, 2021**

**6. Category of Proposed Change**

☐ Sport Fishing

☐ Commercial Fishing

• **Hunting**

☐ Other, please specify:

**7. The proposal is to:** (*To determine section number(s), see current year regulation booklet or <https://govt.westlaw.com/calregs>*)

• **Amend Title 14 Section(s): Division 1, Subdivision 2, Sections 350, 353, and 353(c).**

☐ Add New Title 14 Section(s):

☐ Repeal Title 14 Section(s):

**8. If the proposal is related to a previously submitted petition that was rejected, specify the tracking number of the previously submitted petition**

Or ***Not applicable.***



9. **Effective date:** If applicable, identify the desired effective date of the regulation.  
If the proposed change requires immediate implementation, explain the nature of the emergency: I'd say it's kind of urgent. Desired effective date would be by end of July 2021.
10. **Supporting documentation:** Identify and attach to the petition any information supporting the proposal including data, reports and other documents: N/A
11. **Economic or Fiscal Impacts:** Identify any known impacts of the proposed regulation change on revenues to the California Department of Fish and Wildlife, individuals, businesses, jobs, other state agencies, local agencies, schools, or housing: *Would increase your revenue based on increased anticipated hunter activity despite reduced tag revenue if implemented as proposed. Would result in greater number of license renewals, ammo purchases, and hunters accessing, using, and thus paying for the maintenance and conservation of public lands.*
12. **Forms:** If applicable, list any forms to be created, amended or repealed:  
No new forms. If third proposal were to be adopted (see "third request" / "item 3 rationale"), would effectively repeal requirement to apply online for wild pig tag.

### SECTION 3: FGC Staff Only

Date received: 5/21/2021

FGC staff action:

☒ Accept - complete

☐ Reject - incomplete

☐ Reject - outside scope of FGC authority

Tracking Number

Date petitioner was notified of receipt of petition and pending action: 5/26/21

Meeting date for FGC consideration: \_\_\_\_\_

FGC action:

☐ Denied by FGC

☐ Denied - same as petition \_\_\_\_\_

Tracking Number

☐ Granted for consideration of regulation change



Tracking Number: ( 2022-16 )

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Incomplete forms will not be accepted. A petition is incomplete if it is not submitted on this form or fails to contain necessary information in each of the required categories listed on this form (Section I). A petition will be rejected if it does not pertain to issues under the Commission's authority. A petition may be denied if any petition requesting a functionally equivalent regulation change was considered within the previous 12 months and no information or data is being submitted beyond what was previously submitted. If you need help with this form, please contact Commission staff at (916) 653-4899 or [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov).

## SECTION I: Required Information.

*Please be succinct. Responses for Section I should not exceed five pages*

### 1. Person or organization requesting the change (Required)

Name of primary contact person: Randal South

Address:

Telephone number:

Email address:

### 2. Rulemaking Authority (Required) - Reference to the statutory or constitutional authority of the Commission to take the action requested:

- 1) Fish & Game Code (FGC), Chapter 2, Section 203
- 2) Fish & Game Code (FGC), Chapter 2, Section 219

### 3. Overview (Required) - Summarize the proposed changes to regulations:

- 1) Ban bird hunting at the Lake Earl Wildlife area. (Accepted) (Outside scope of FGC authority)
- 2) Replace county operated Lake Earl breaching practice with a solar powered aqueduct.

### 4. Rationale (Required) - Describe the problem and the reason for the proposed change:

Too close to human habitation, and consistent violation of the rule that requires hunters not to discharge their firearms within 150 yards of human habitation (FGC, Article 1, Section 3004).

(see attached brief supplement)

## SECTION II: Optional Information

### 5. Date of Petition: 09-17-22

### 6. Category of Proposed Change

☐ Sport Fishing

☐ Commercial Fishing

☒ Hunting

☒ Other, please specify: Habitat Maintenance





7. **The proposal is to:** (To determine section number(s), see current year regulation booklet or <https://govt.westlaw.com/calregs>)  
☒ Amend Title 14 Section(s): Chapter 10, Section 625  
☐ Add New Title 14 Section(s): [Click here to enter text.](#)  
☐ Repeal Title 14 Section(s): [Click here to enter text.](#)
8. **If the proposal is related to a previously submitted petition that was rejected, specify the tracking number of the previously submitted petition** [Click here to enter text.](#)  
Or ☒ Not applicable.
9. **Effective date:** If applicable, identify the desired effective date of the regulation.  
If the proposed change requires immediate implementation, explain the nature of the emergency: 11-01-22, but no later than 11-01-23 if FGC and CDFW are unable to complete proposed amendments in the 2022 calendar year.
10. **Supporting documentation:** Identify and attach to the petition any information supporting the proposal including data, reports and other documents: Statement from petitioner, and following url -- <https://www.thepetitionsite.com/613/953/649/stop-bird-hunting-on-the-lake-earl-wildlife-refuge/>
11. **Economic or Fiscal Impacts:** Identify any known impacts of the proposed regulation change on revenues to the California Department of Fish and Wildlife, individuals, businesses, jobs, other state agencies, local agencies, schools, or housing: Ban on bird hunting will likely have a positive impact in terms of public revenue generated by Del Norte county (continued on attached)
12. **Forms:** If applicable, list any forms to be created, amended or repealed:  
[Click here to enter text.](#)

### SECTION 3: FGC Staff Only

Date received: 9/19/22

FGC staff action:

- ☒ Accept - complete  
☐ Reject - incomplete  
☐ Reject - outside scope of FGC authority

Tracking Number

Date petitioner was notified of receipt of petition and pending action: 10/5/22

Meeting date for FGC consideration: \_\_\_\_\_

FGC action:

- ☐ Denied by FGC  
☐ Denied - same as petition \_\_\_\_\_  
Tracking Number  
☐ Granted for consideration of regulation change

Petition to The California Fish & Game Commission  
(*Supplement* to FGC 1, Dated 09-16-22 [Revolving 06/19])

4. Rational (*continued*):

TO CLOSE TO HUMAN HABITATION

The petitioner supervises a youth hostel that shares a border with the Lake Earl Wildlife area, and guests commonly complain about the sound of gun shots during the hunting season. The petitioner's property is less than 200 feet from Lake Earl during the summer time, and part of the petitioner's property is submerged by Lake Earl during the flood season. Guests can not walk to the end of our property without concern about getting shot by duck hunters. As a result, it potentially jeopardizes revenue that Del Norte County receives from the operation since the hostel pays 10% transient occupancy tax on a quarterly basis to Del Norte County.

Similarly the home across the street from the Petitioner's property is occupied by a family that purchased the property from the Lamoore estate, and some of the Lamoore's have previously signed petitions objecting to hunting on CDFW property because it was too close to their property.

HUNTERS DO NOT TAKE HOME WHAT THEY KILL

The graphic images presented in the following URL demonstrate hunters don't take home their birds <https://www.thepetitionsite.com/613/953/649/stop-bird-hunting-on-the-lake-earl-wildlife-refuge/> These images were taken by the petitioner who started a petition on petitionsite.org after the local newspaper (Triplicate) refused to publish the story and images, but instead of leaving the dead birds for the local animal population to consume, CDFW and the county came by to pick them up quickly so that no one would know about it after receiving a complaint.

Other reasons justifying the end of bird hunting include poaching, hunter misconduct, and all of the reasons mentioned in the onsite petition that has as of today has more than 246,047 signatures -- 92,804 of those signatures are in California. The petition on the petitionsite.org provides an authoritative, and historical perspective that suggest that the construction of the road to the mouth of Lake Earl in 1971 changed the character of hunting, and the type of people that hunt in this area.

A detailed analysis of the problem as well as other problems from current bird hunting practices are described in detail on petitionsite.org

10. Supporting Documentation:

The issue of damage from breaching, and lack of breaching of the sand bar has been thoroughly aired as evidenced by the multitude of the following news articles on the matter, and the lawsuit filed against CDFW by property owners in the Ocean Shores area, etc :

<https://www.sfgate.com/bayarea/article/Beach-breach-battle-3052593.php>  
<https://derrickjensen.org/culture-of-make-believe/lake-earl/>  
<https://www.casemine.com/judgement/us/5914b319add7b0493476413f>  
<https://ceqanet.opr.ca.gov/1989013110/8>

[https://www.academia.edu/64658644/Barrier\\_Beach\\_Breaching\\_from\\_the\\_Lagoon\\_Side\\_With\\_Reference\\_to\\_Northern\\_California](https://www.academia.edu/64658644/Barrier_Beach_Breaching_from_the_Lagoon_Side_With_Reference_to_Northern_California)

The issue before FGC is not whether or not the water level should be breached during flood season, but best practices on how to do it. Historically the Army Core of Engineers “has not” reviewed aqueduct technology in this area. As a result, aqueduct technology should be incorporated into the Master Plan so as to minimize ecologic damage, damage to the water table, and enhance the usability of the lagoon by fish and birds.

#### 11. Economic & Fiscal Impact:

Del Norte County’s Revenue will likely be enhanced by the ban on duck hunting since guests at the hostel pay a 10% transient occupancy tax to Del Norte County. The loss of revenue to the state from duck hunting license is not germane to the equation because CDFW has consistently refused to engage in discussions about other streams of revenue to them besides the meager amount of money they collect from duck hunting licenses at Lake Earl.

During previous discussions with CDFW, it was proposed that they consider offering organized bird tours for a fee which are already conducted on an informal basis by Ornithologist in the area. Additionally CDFW failed to rebuild their 100 year old farm house they purchased at the intersection of Lake Earl Drive, and Lakeview Drive after it burned down from a fire even though this was an insurable risk. The loss of this building reduced housing stocks in the area since it was capable of housing at least 12 people. Those 12 people inevitably would have provided a consistent source of revenue to CDFW. As a result, the issue of a loss of revenue from hunting licenses is not really germane since CDFW has chosen not to accept funding from other revenue streams.

Del Norte County’s economic impact from aqueduct construction is negligible. The county will save money on the cost of a bulldozer opening up the sand bar, save money on the cost of permits with various regulators, but will incur annual, or biannual costs in cleaning filters on the intake of the aqueduct which are needed in order to insure the aqueduct doesn’t suck up animal life when it dumps water into the ocean.

#### HABITAT PRESERVATION

CDFW should replace the process of breaching Lake Earl with a solar powered, pump driven, electric aqueduct, or similar apparatus as reviewed by the Army Core of Engineers.

The current breaching process of Lake Earl has significantly increased the salt level which is evident by the dying plant life that surrounds the lake including the death of large coniferous trees on its perimeter. Other concerns are potential contamination to the underground aquifer which many residents are dependent on since most of the county is on well water.

The result of piping the water over the sand bar is that the lake will desalinate over time as water is pumped from the lake without opening up the sand bar.



**From:** Colin Gallagher <[REDACTED]>

**Sent:** Friday, October 14, 2022 12:07 AM

**To:** FGC <FGC@fgc.ca.gov>

**Subject:** To all Fish and Game Commission Members Regarding Regulatory Petition 2021-007 (Petition to use Big Bore BB Devices as method of take for Wild Pig): Errors Entered Into The Record by Chad Dibble on October 13, 2022 in his Update on 2021-007, For Which ...

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To all Fish and Game Commissioners - please see below inline.

----- Forwarded message -----

**From:** Colin Gallagher <[REDACTED]>

**Date:** Thu, Oct 13, 2022, 11:59 PM

**Subject:** Message for all Fish and Game Commission Members and Potentially Interested Persons Regarding Regulatory Petition 2021-007 (Petition to use Big Bore BB Devices as method of take for Wild Pig): Errors Entered Into The Record by Chad Dibble on October 13, 2022 in his Update on 2021-007, For Which This Email Provides Corrections

**To:** Cornman, Ari@FGC <[REDACTED]>

**Cc:** Bess, David@Wildlife <[REDACTED]>, Kelley, Garry@Wildlife

<[REDACTED]>, Gardner, Scott@Wildlife <[REDACTED]>,<

<[district3@co.monterey.ca.us](mailto:district3@co.monterey.ca.us)>, California Chapter <[california@backcountryhunters.org](mailto:california@backcountryhunters.org)>,<

<[REDACTED]>,<[REDACTED]>,<[director@wildlife.ca.gov](mailto:director@wildlife.ca.gov)>,<McKeith,

Cynthia@FGC <[REDACTED]>,<Miller-Henson, Melissa@FGC <[REDACTED]>

<[REDACTED]>

**From:** Colin Gallagher

October 13, 2022

**Regarding Regulatory Petition 2021-007: Errors Entered Into The Record by Chad Dibble on October 13, 2022 in his Update on 2021-007, For Which This Email Provides Corrections**

My name is Colin Gallagher, and I am the author of Regulatory Petition 2021-007, which is anticipated to be set for a final decision date by the Commission in December 2022.

I am writing this email to correct the record due to the errors and clear mischaracterizations verbally entered into the record about my Regulatory Petition (2021-007) by Chad Dibble, Deputy Director of the Department in his update on my petition given to the Commission on October 13, 2022.

On the Fish and Game Commission's Item 19 of October 19, Chad Dibble, Deputy Director of the Department, stated that my Regulatory Petition was comprised of three requests.

He omitted that I asked the Commission not to approve every element of the request, but to consider approving it as an "either / or" form.

Chad Dibble stated as part of his presentation that (regarding his summary of the Department's view), "we do not believe that taking big game with a BB device is allowed." This statement was made in a dismissive way as though it should be a reason to dismiss the Regulatory Petition, **but in fact I know (as does nearly everyone in the State) that taking big game with BB devices is not allowed under current Fish and Game Code. That is why the Regulatory Petition was submitted to the Commission, because it is within the Commission's authority to approve BB devices as a method of take for wild pig.**

Authority cited in petition originally submitted to Commission: Sections 200, 203 and 265, Fish and Game Code, and in context of the proposal, note in particular Sections 200(a), 203(d), and 265 of Fish and Game Code. (Reference: Sections 2005, 2055, 3004.5 and 3950, Fish and Game Code.) Authority for Commission to enact changes to California Code of Regulations Title 14, Section 353 (for 14 CCR § 353 subsection (c), 14 CA ADC § 353 subsection (c))

Fish and Game Code Section 200:

(a) **There is hereby delegated to the commission the power to regulate the taking or possession of birds, mammals, fish, amphibians, and reptiles.**

(b) No power is delegated to the commission by this section to regulate either of the following:

(1) The taking, possessing, processing, or use of fish, amphibians, kelp, or other aquatic plants for commercial purposes.

(2) The taking or possession of a spike buck or spotted fawn. "Spotted fawn" means a deer one year of age or less that has spotted pelage. "Spike buck" means a male deer with unbranched antlers on both sides that are more than three inches in length.

(c) This section and any regulations adopted pursuant to this section have no effect on any provision of this code or any regulation adopted pursuant to this code that relates to a matter described in paragraph (1) of subdivision (b).

Fish and Game Code Section 203:

Any regulation of the commission pursuant to this article relating to resident game birds, game mammals and fur-bearing mammals may apply to all or any areas, districts, or portions thereof, **at the discretion of the commission**, and may do any or all of the following as to any or all species or subspecies:

(a) Establish, extend, shorten, or abolish open seasons and closed seasons.

(b) Establish, change, or abolish bag limits and possession limits.

(c) Establish and change areas or territorial limits for their taking.

**(d) Prescribe the manner and the means of taking.**

(e) Establish, change, or abolish restrictions based upon sex, maturity, or other physical distinctions.

Clearly, Chad Dibble is incorrect in stating simply that "taking big game with a BB device is not allowed." Certainly, it is not currently allowed under Fish and Game Code, but my Regulatory Petition submitted over two years ago properly asked the Commission to change the method of take since it is the Commission that decides whether BB devices can be allowed as a method of take for wild pig (as I requested), not the Department.

Chad Dibble also mischaracterized an element of item 3 (element 3 of my proposal in my petition). While laughing and dismissively chuckling about my petition, he claimed on October 13, 2022 before the Commissioners that the third part of my Regulatory Petition was solely about removing wild pig from big game classification. As he chuckled over this apparently ridiculous idea, he claimed that clearly the third part of my petition was not necessary since SB 856 will become operative, in his words, "rendering this request unnecessary."

But this clearly was a deeply inaccurate and profound mischaracterization of my Regulatory Petition.

Here is what I asked for (as quoted from my petition, which Chad Dibble either failed to read or intentionally misquoted to the Commission:

**"There should be rendered by the Commission an interpretation of Mammal Hunting Regulations §353. Methods Authorized for Taking Big Game subsection (c) so that it will be considered to be legal to utilize a BB device for hunting wild pig in California, so long as the BB device is at least .40 caliber in designation, or larger."**

**"My second request is that the Commission alter the .40 caliber minimum designation formally to .30 minimum (whether for rifle centerfire, muzzleloader, or BB device) in 353(c)."**

**"Alternatively, the Commission could make a change that would require .357 caliber minimum for BB devices to hunt wild boar (this would not alter any California lead free regulations), and clarify that hunting boar with centerfire cartridges with softnose or expanding projectiles of .30 caliber or greater in designation is permitted (lead free would still be required as the law currently requires if we are using centerfire rounds)."**

**"My third request is distinct than my first and second and should be evaluated separately. This request is for an actual change, not an interpretation. This request, for a change in Mammal Hunting Regulations, is simply to remove wild pig (feral pigs, European wild pigs, and their hybrids (genus Sus)) from Big Game as defined in the Mammal Hunting Regulations at §350. I request that the Commission agendaize this change for discussion then finalize the change."**

See also previous legislation on the matter from 2017 - 2018 (AB 2805):

[https://leginfo.legislature.ca.gov/faces/billStatusClient.xhtml?bill\\_id=201720180AB2805](https://leginfo.legislature.ca.gov/faces/billStatusClient.xhtml?bill_id=201720180AB2805) "

Chad Dibble completely skipped the alternative to my second request (which I have long communicated to staff as being my preferred alternative, and which always was part of my Regulatory Petition as originally submitted to the Commission).

The alternative to my second request stated, "**Alternatively, the Commission could make a change that would require .357 caliber minimum**

**for BB devices to hunt wild boar (this would not alter any California lead free regulations), and clarify that hunting boar with centerfire cartridges with softnose or expanding projectiles of .30 caliber or greater in designation is permitted (lead free would still be required as the law currently requires if we are using centerfire rounds)."**

Obviously, if the Commission were to approve this alternative, it would be changing the method of take which is currently listed in Fish and Game Code and would thus be authorizing .357 minimum caliber BB devices as a method of take for wild pig.

There is NOTHING prohibiting the Commission from granting my request for this alternative. Any statement that Chad Dibble makes which suggests the Commission cannot (or should not) do so is completely wrong.

This above alternative (as submitted in my petition provided to the Commission formally in May 2021, though I have engaged the Commission on this issue since May 2017 prior to that) has been repeatedly communicated by me to Commission staff as the preferred alternative. **Furthermore, this alternative in my proposed Regulatory Petition is consistent with SB 856 which has become law.** SB 856 states in pertinent part, in new law section 3004.5(b),

“(b) Except as provided in subdivision (j), and as soon as is practicable as implemented by the commission pursuant to subdivision (i), but by no

later than July 1, 2019,  
nonlead ammunition, as  
determined by the  
commission, shall be  
required when taking all  
wildlife, including game  
mammals, exotic game  
mammals, game birds,  
nongame birds, and  
nongame mammals, with  
any **firearm**."

What does this mean? It is simple. Since a BB device is **not a firearm** under California law, and since nonlead restrictions do not apply to BB devices, the BB devices (**if the Commission approves my proposed alternative in the Regulatory Petition as a method of take for wild pig**) are not subject to lead free restrictions. Centerfire rifles, on the other hand, are firearms and are subject to lead free restrictions.

It is not enough for SB 856 to have become law, contrary to Chris Dibble's assertions. In order for my petition to become a reality - which I assert is necessary since hunters do need additional methods of take for wild pig - the Commission must act to approve my petition.

Furthermore, the 6mm size cap on what constituted a BB device was removed by prior legislation signed into law by then Governor Brown (as a result, big bore airguns were deemed to be legally equivalent to BB devices under California law -- see **Senate Bill No. 199, CHAPTER 915**, An act to amend,

repeal, and add Sections 16250 and 16700 of the Penal Code, relating to BB devices. -

[ Approved

by Governor September 30, 2014. Filed with Secretary of

State September 30, 2014. ]

Why should  
California's be able  
to legally own these  
big bore BB devices  
but be kept from  
hunting wild pig  
with them?

Why should people have to be limited to firearms to get repeated solid shots off on wild pigs and not have silent and simple alternatives such as airguns?

There is no good reason to deny this petition. If the

Commission is sincere about the "three R's" or whatever buzzword you are using to describe how you get new people into hunting, you need to give people more ways to do it and make it easy.



I have attached my petition in the complete form the Fish and Game Commission has made it available over the past few years. I see no reason to mischaracterize my Regulatory Petition

when the internet  
shows clearly what  
it is and when  
repeated email and  
verbal  
correspondence  
over the past few  
years have clearly  
shown that my  
Petition asks for  
something simple

which is within the  
power of the  
Commission to  
grant.

Thank you for  
reviewing this  
message and I look  
forward to a final  
decision in  
December 2022  
from the

Commission. This  
waiting for a  
decision has gone  
on for years and it  
is really high time  
the Commission  
approve my  
Regulatory Petition.

Respectfully,  
Colin Gallagher

**From:** Colin Gallagher [REDACTED] >  
**Sent:** Thursday, October 13, 2022 7:53 AM  
**To:** FGC <FGC@fgc.ca.gov>  
**Cc:** Cornman, Ari@FGC <[REDACTED]>; Mckeith, Cynthia@FGC <[REDACTED]>; Miller-Henson, Melissa@FGC <[REDACTED]>  
**Subject:** Comment on Item 12 for October 13, 2022 Fish and Game Commission meeting: General public comment for items not on the agenda Receive public comment regarding topics within the Commission's authority that are not included on the agenda.

**WARNING:** This message is from an external source. Verify the sender and exercise caution when clicking links or opening attachments.

From: Colin Gallagher  
[REDACTED]  
[REDACTED]

The following is my Comment on Item 12 for October 13, 2022 Fish and Game Commission meeting:  
General public comment for items not on the agenda  
Receive public comment regarding topics within the Commission's authority that are not included on the agenda.

(Note: The Commission may not discuss or take action on any matter raised during this item, except to decide whether to place the matter on the agenda of a future meeting (sections 11125 and 11125.7(a), California Government Code).)

**It is requested by this message that the Commission place my regulatory petition - numbered 2021-007 - relating to BB devices (airguns) and wild pigs - on the agenda for a final decision at the next meeting of the Commission.**

**This is within the Commission's authority.**

**Authority cited in petition submitted to Commission: Sections 200, 203 and 265, Fish and Game Code, and in context of the proposal, note in particular Sections 200(a), 203(d), and 265 of Fish and Game Code. (Reference: Sections 2005, 2055, 3004.5 and 3950, Fish and Game Code.) Authority for Commission to enact changes to California Code of Regulations Title 14, Section 353 (for 14 CCR § 353 subsection (c), 14 CA ADC § 353 subsection (c))**

Regulatory Petition 2021-007 would, if approved by the Commission, allow people to use BB devices with a minimum .357 caliber designation as a method of take for wild pig. My petition overview requested, in part, that "the Commission could make a change that would require .357 caliber minimum for BB devices to hunt wild boar (this would not alter any California lead free regulations), and clarify that hunting boar with centerfire cartridges with softnose or expanding projectiles of .30 caliber or greater in designation is permitted (lead free would still be required as the law currently requires if we are using centerfire rounds)."

With SB 856 having been signed into law, the State law will limit hunting of the "exotic" game category for wild pig to use of lead free ammunition, but **only if you are using firearms**. BB devices **do not legally constitute firearms** under California law and thus would be exempt from SB 856 prohibitions if the Commission were to add them as a method of take. (There is no legal prohibition that would keep the Commission from doing so, and it is in the public interest to do so.)

Notably, the BB devices can also be integrally suppressed (silencer added) by the manufacturer and sent directly to the hunter in California without burdensome forms, fees, months of wait, and taxes, since they are not a firearm. The

standard California silencer prohibition does not apply to BB devices, thus enabling the possibility of removal of more than one or several wild pigs before the rest of the group or passel can detect the shot and run away.

Respectfully,

Colin Gallagher

**From:** Colin Gallagher <[REDACTED]>  
**Sent:** Thursday, October 13, 2022 6:46 AM  
**To:** FGC <FGC@fgc.ca.gov>  
**Cc:** Cornman, Ari@FGC <[REDACTED]>; Mckeith, Cynthia@FGC <[REDACTED]>; Miller-Henson, Melissa@FGC <[REDACTED]>  
**Subject:** Comment on Agenda Item 18(B)(III) for October 13 of Fish and Game Commission Agenda, regarding Petition 2022-10: Request to authorize air guns as a method of take for deer.

**WARNING:** This message is from an external source. Verify the sender and exercise caution when clicking links or opening attachments.

From: Colin Gallagher  
[REDACTED]  
[REDACTED]

Please accept the following as my comment on Agenda Item 18(B)(III) for October 13 of Fish and Game Commission Agenda, regarding Petition 2022-10: Request to authorize air guns as a method of take for deer.

This is a late comment since I do not anticipate being able to be present in person on the call (please provide my comment to Commissioners and staff).

The individual author who petitioned the FGC in this case (who initiated Petition 2022-10) remarked in part of his petition overview that "If airguns can't be used for hunting cuz of lead they make non lead for the 50 cal it's copper" and further indicated in his rationale section, "it would be nice to hunt deer different ways like airguns slugs non lead copper or arrow guns please."

The .50 cal slug he refers to is a copper product made by only one company, which is perpetually out of stock because they cannot produce enough even to meet demand of those few who are interested in this unusual specialty product. This is a LeHigh product: <https://lehighdefense.com/our-technologies/controlled-fracturing.html>

Effectively for airguns the LeHigh slug is available only in .50 caliber since the dimensions of the other slugs they produce are not ideal for airguns of .357 (such as the Benjamin Bulldog) or .457 (such as the Texan SS), but even in .50 the LeHigh slug is not of any use to hunters as it is literally never in stock.

Similarly, the EcoSlug is even more limited as not only is it frequently out of stock for sometimes months at a time but it only is suitable for certain types of airguns - Seneca / Sam Yang Dragon Claw .50 caliber.

EcoSlug page:  
<http://www.eco-slug.com/orderpellets.htm>

Finally, based on observations in the field from those who have used these lead free pellets with BB devices, their report produces a loud crack, and so apart from the issue of having to clean tin fragments out of a barrel, the noise is generally considered to be louder which is less advantageous to a hunter.

It would make no sense to approve a new method of take for deer only to make it impossible for deer hunters to use this method of take because the one company that makes a copper slug can't produce it

in quantities sufficient for the market, and to place those very few hunters who can somehow find such slugs at a disadvantage due to noise and impact on their equipment.

As another comment I have on this petition, while I support the idea of the use of airguns (technically referred to as "BB devices" in California law) to be added as an additional method of take in California for animals such as deer and wild pig, it is important to note that the BB device in California is not defined as a firearm and **is not subject to lead free pellet or slug limitations.**

This is an important distinction to make. There **is no need for any new imposition or lead free restriction on ammunition related to BB devices.** State law does not require it and furthermore, such slugs for the caliber one would hunt deer or pig with, do not exist (are not available in the market, as previously mentioned, with the exception of the LeHigh .50 ) for BB devices (airguns) if one in fact were to be authorized by the Commission to hunt with a BB device (airgun) in .357, .45, or .50 for deer or wild pig.

To substantiate this claim, one can look at the comprehensive list of lead free pellet products for BB devices (airguns). There are lead free pellets for .177, .22, and .25, but not for "big bore" calibers of airguns such as .357, .45, and .50. This is not reason to delay approval of regulatory petitions for use of BB devices (airguns) as a method of take for deer in the case of this petition or for wild pig in the case of another, similar petition. No delay of approval of petitions such as these should be made just to "wait and see if more lead free products come on the market." Rather, approve the petitions now and allow people the maximum possible flexibility to use whatever kind of BB device slugs (whether lead or non-lead) they can find for a BB device (airgun) of appropriate caliber for deer or wild pig. The minimum caliber should be .357.

Comprehensive list of airgun pellet products:

<https://airgunpelletdb.com/a-to-z/>

My regulatory petition - 2021-007 - relating to BB devices (airguns) and wild pigs, would, if approved by the Commission, allow people to use BB devices with a minimum .357 caliber designation as a method of take for wild pig. I ask that my petition be approved as well. My petition overview requested, in part, that "the Commission could make a change that would require .357 caliber minimum for BB devices to hunt wild boar (this would not alter any California lead free regulations), and clarify that hunting boar with centerfire cartridges with softnose or expanding projectiles of .30 caliber or greater in designation is permitted (lead free would still be required as the law currently requires if we are using centerfire rounds)." (By 'centerfire rounds' it is meant here a rifle round using gunpowder where the primer is located in the center of the casing base.)

Respectfully,

Colin Gallagher





County of Del Norte  
Board of Supervisors  
981 "H" Street, Ste. 200  
Crescent City, California 95531

Phone  
(707) 464-7204

Fax  
(707) 464-1165

November 21, 2022

California Fish and Game Commission  
P.O. Box 944209  
Sacramento, CA 94244-2090

**Re: Petition 2022-16 - Oppose**

Dear Fish and Game Commission:

On November 8<sup>th</sup>, the Del Norte County Board of Supervisors was made aware, during the public comment period by a member of the public, about a petition pending before the Fish and Game Commission (Petition 2022-16) requesting: 1) "Ban on bird hunting at the Lake Earl Wildlife Area" and 2) "Replace county operated Lake Earl breaching practice with a solar powered aqueduct." Please be advised that the Board of Supervisors strongly opposes the Commission taking any action on either of these requests prior to formal consultation with the Board. Should the Commission however elect to take action on this petition prior to consultation occurring, the Board does wish to submit these comments for consideration.

The Lake Earl Wildlife Area is a popular destination that provides for a number of outdoor activities including waterfowl hunting, which is provided at Lake Earl under the authority of the Department of Fish and Wildlife. It is important to recognize that waterfowl hunting at Lake Earl has been responsibly enjoyed by multiple generations of residents and visitors to Del Norte County for many, many years. Moreover, this Board fully supports waterfowl hunting as a unique way in which the public can experience the natural world and become engaged in wildlife and habitat conservation efforts related specifically to waterfowl hunting. To indirectly learn that the Commission is considering action on a Petition requesting to ban waterfowl hunting at Lake Earl is incredibly disheartening to this Board as this action would have a profound impact on access to waterfowl hunting in Del Norte County and the broader region. It would not be an exaggeration to say that the consequences of removing this opportunity in Del Norte County would be devastating to the public including to the youth of this County who might never have the opportunity to become engaged in wildlife and habitat conservation efforts fueled by their waterfowl hunting experience as so many hunters have.

We have reviewed the claims in the submitted Petition and find them to be specious, at best.

Notably, the claims of *public safety being endangered by duck hunters, hunters leaving dead birds, poaching, and other hunter misconduct occurring at Lake Earl* is entirely without support in the Petition. To wit, the "Supporting Documentation" provided is quite simply reported news articles and opinion pieces relating primarily to the breaching of Lake Earl as well as a link to Notice of Determination filed pursuant to CEQA relating to the Lake and Streambed Alteration Agreement issued by CDFW. In essence, this Petition is entirely unsupported in its regard to a ban on waterfowl hunting in the Lake Earl Wildlife Area.

While we are choosing to use this opportunity to address the Petition's request to ban waterfowl hunting at Lake Earl, to be clear, the Board of Supervisors opposes both elements of the submitted Petition. That being said, while we find the "Supporting Documentation" provided for the waterfowl hunting ban to be specious, we find the request to replace the mechanized method of breaching Lake Earl with construction of an aqueduct to be outside the purview of the Commission. As such, we will reserve our comments on that element of the Petition for the proper time and place, but please know that the Board finds that element of the Petition to be equally unwarranted and we urge the Commission to reject it on the basis of it being outside the authority of the Commission. Should you require any further information please contact us.

Respectfully,



Gerry Hemmingsen, Chairman  
Board of Supervisors

CC: Senator Mike McGuire  
Assemblymember Jim Wood  
Sidd Nag, Rural County Representatives of California  
Karen Lange, Shaw Yoder Antwih Schmelzer & Lange  
Mark Hennelly, California Waterfowl Association

Del Norte Waterfowlers  
c/o 300 Kelly Rd  
Crescent City, CA 95531  
707-458-8785

11/23/2022

California Fish and Game Commission  
PO Box 944209  
Sacramento, CA 94244-2090

RE: Petition 2022-16 to ban waterfowl hunting on the Lake Earl Wildlife Area in Del Norte County, California – Oppose

Dear California Fish and Game Commission,

I am writing on behalf of the Del Norte Waterfowlers (DNWF), a local 100 member strong advocacy group for waterfowl hunting in Del Norte County, Ca. Our Mission Statement is to “Provide a collective public voice for local waterfowl hunters”. Our Objectives are to: “Promote and expand local waterfowl hunting access; promote and expand local waterfowl hunting opportunity; promote local wetland conservation and enhancement; promote local youth hunter opportunities; provide input to local, regional, state, and federal government offices and officials; provide input to Non-Governmental Organizations (NGOs) - CWA, DU, Grange, etc.; promote responsible use of public and private lands; promote sound management of public lands whereby increasing waterfowl conditions and numbers.”

The DNWF stand in opposition to “petition 2022-16 to ban waterfowl hunting on the Lake Earl Wildlife Area” that is before the California Fish and Game Commission. The petitioner’s allegation of hunter carelessness, wanton waste, and shooting of non-game animals by waterfowl hunters over decades are unfounded. The described acts are illegal and most assuredly would have been dealt with by CDFW Wardens when/if reported and if true. No evidence was given of any widespread illegal actions by waterfowl hunters. The DNWF condemn any illegal action of waterfowl hunters, but equally condemn accusations of widespread illegal activities without a factual basis.

The petitioner’s residence/youth hostel is 150 yards from the shoreline of Lake Earl and there is at least 50 yards of flooded thick tules before open water is reached. Hunting in that general area is by boat and takes place at the tule edge next to the open lake waters. Between the petitioners house/youth hostel and the lakeshore are 150 yds of mostly spruce and alder forest. If the petitioner did not want to live next to a State

wildlife area which has been hunted for decades, and centuries if you go back far enough, why did he choose to buy a home and start a business there?

The petitioners noise complaint seems mostly rooted in an imagined potential loss of income because some guests may be concerned about shooting noises. The Lake Earl Wildlife Area consist of 2 lakes and associated wetlands and creeks that have been hunted by local residents going back 100s of years. It is also safe to say that the guest can also hear live firing at times all year round from Pelican Bay State Prison roughly 2 miles away, as well as from other State Law Enforcement personnel that routinely shoot for training and qualification purposes on the LEWA. Should we shut those down as well?

Hunting is one tenet of the North American Model of Wildlife Management. It is on hunters to follow the prescribed rules and regulation related to hunting, and the general public needs to understand that legal hunting is a management tool for that Model of Wildlife Management that is acknowledged and respected around the world.

On October 18, 2022 at a CDFW Outreach Meeting in Smith River, Del Norte County, CA the Del Norte Waterfowlers submitted 277 "opposition to hunting closure" written comments to CDFW related to a 100 acre hunting closure on part of the Lake Earl Wildlife Area. Suffice it to say that those 277 comments will equally apply to this proposed closure of the entire LEWA. I am sure CDFW can furnish those comment to the Commission if requested.

In the last 25 years local waterfowl hunters have lost access to and hunting opportunity on over 1500 acres of public land. The LEWA is the only remaining public area available to waterfowl hunters in our very rural county. The loss of hunting opportunity and access on the LEWA would end public waterfowl hunting in Del Norte County.

Thank You,

*Jeffrey F. Reed*

Jeff Reed

For the Del Norte Waterfowlers

**From:** Sebastian Garcia [REDACTED]  
**Sent:** Wednesday, November 30, 2022 11:29 PM  
**To:** FGC <FGC@fgc.ca.gov>  
**Subject:** Oppose Petition 2022-16

You don't often get email from [REDACTED]. [Learn why this is important](#)

**WARNING:** This message is from an external source. Verify the sender and exercise caution when clicking links or opening attachments.

Dear Fish and Game Commission,

I am writing to you as a public land waterfowl hunter in the state of California asking you to please reject Petition 2022-16 which would ban waterfowl hunting on Lake Earl in Del Norte County. The public in Del Norte County already has limited access to hunt in the area and it would be devastating for those who choose waterfowl hunting as their preferred form of recreation.

The petitioners hardly have a valid argument when it comes to justifying their stance on prohibiting waterfowl hunting on the lake. Waterfowl hunting has occurred on this lake for decades and if it were an issue, action would have been taken long ago. Waterfowlers respect this area and want our way of life to be preserved. Even if there were irresponsible and unethical hunters at the lake, the hunters who frequent the area would most certainly call them out and turn them in.

The hunting community cares more about these public lands than any other group and to take their right to hunt away would be more detrimental than good to Lake Earl. In addition to devastating Lake Earl, this could have a negative effect on other areas in the state where the North American Model of Wildlife Conservation is in place and has been for decades. It is a proven model that works for the conservation of our lands and wildlife and giving in to the petitioners could set a dangerous precedent for our great state.

I appreciate the Commission's time and hope you take my comments into consideration.

Best,

Sebastian Garcia

[REDACTED]