

STATE OF CALIFORNIA  
DEPARTMENT OF FISH AND WILDLIFE  
INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION  
(Pre-Publication of Notice Statement)

Amend Section 699.5  
Title 14, California Code of Regulations (CCR)  
Re: Fees for Lake and Streambed Alteration Agreements

- I. Date of Initial Statement of Reasons: July 16, 2013
  
- II. Dates and Locations of Scheduled Hearings:
  - (a) Public Hearing: 

Date:	October 8, 2013
Time:	1:30 p.m. to 3:30 p.m.
Location:	Sacramento

III. Description of Regulatory Action:

(a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

1. The purpose of the proposed amendment is to update the Department's fee schedule for lake and streambed alteration agreements by: (a) adjusting the fees for inflation in accordance with Fish and Game Code section 713; and (b) removing the fees for timber harvest agreements in accordance with new legislation that took effect on July 1, 2013.
  
2. FGC Section 1609 authorizes the Department to charge fees to any entity subject to Fish and Game Code section 1602 in an amount necessary to pay the total costs the Department incurs in administering and enforcing Fish and Game Code section 1600 *et seq.* The fees established by the Department for lake and streambed alteration agreements are in Section 699.5, Title 14, CCR.

FGC Section 1609 also specifies that the Department may adjust the fees in the schedule for inflation pursuant to FGC Section 713. According to Section 713, the Department must use changes in the Implicit Price Deflator (IDP) for State and Local Government Purchases of Goods and Services published by the United States Department of Commerce as the index to determine the annual rate of increase or decrease in the fees, referred to as the "index rate."

FGC Section 713(c) allows the Department to recalculate the fees for each year that the fees have not been increased to determine that all appropriate indexing has been included in the current fees. The fee schedule in Section 699.5 was last adjusted for inflation in 2009. Using the formula specified in Section 713, the Department has determined that the fees need to be increased by approximately

9.5% to account for inflation over the last four years. If the Department does not adjust the fees, it will experience a budget shortfall that will affect its ability to administer and enforce FGC Section 1600 *et seq.*, the purpose of which is to protect and conserve the state's fish and wildlife resources.

3. In accordance with Public Resources Code Section 4629.6(c), effective July 1, 2013, the Department may no longer collect fees for lake and streambed agreements necessary to conduct timber operations, referred to as timber harvest agreements. To meet this requirement, the Department is deleting the fees for timber harvest agreements in Sections 699.5(d) and (g).

(b) Proposed Regulations

1. Sections 699.5(b), (c), (e), (f), (i), (j), and (k) include fees which were established in 2009. These fees will be replaced with new fees that have been adjusted for inflation over the past four years in accordance with FGC Section 713. The Department proposes to apply the IDP price indexes for the years 2010, 2011, 2012, and 2013 to these fees and amend the fee schedule accordingly. The detailed computations indicating the application of the annual index to each fee are presented on the attached worksheet entitled EXHIBIT A - LAKE AND STREAMBED ALTERATION PROGRAM 2013/2014 IPD FEE ADJUSTMENT.
2. Sections 699.5(d) and (g) include fees which as of July 1, 2013, are no longer chargeable to applicants for timber harvest agreements pursuant to Public Resources Code Section 4629.6(c). Hence, these fees will be deleted. The following statement is proposed to be added in Sections 699.5(d) and (g) to reflect this change: "Pursuant to Public Resources Code section 4629.6, subdivision (c), no fee shall be required if the department received the notification after July 1, 2013. This includes a notification made to the department pursuant to Fish and Game Code section 1602 or section 1611."

(c) Authority and Reference:

Authority cited: Sections 713 and 1609, Fish and Game Code. Section 21089, Public Resources Code.

Reference: Section 1609, Fish and Game Code. Sections 4629.6, subdivision (c), and 21089, Public Resources Code.

(d) Specific Technology or Equipment Required by Regulatory Change:

None.

(e) Identification of Reports or Documents Supporting Regulation Change:

Economic Impact Analysis  
Worksheet entitled EXHIBIT A - LAKE AND STREAMBED ALTERATION

## PROGRAM 2013/2014 IPD FEE ADJUSTMENT.

### (f) Public Discussions of Proposed Regulations at the Time of the Notice of Intent to Publish:

No public meetings were scheduled prior to the notice publication. The 45-day comment period provides adequate time for public review of the proposed amendments to Section 699.5. .

### IV. Description of Reasonable Alternatives to Regulatory Action:

#### (a) Alternatives to Proposed Regulation Changes:

No alternatives were identified. The intent of the proposed amendments is to adjust Department fees for lake and streambed alteration agreements in accordance with FGC Section 713 and to reflect legislation that took effect on July 1, 2013.

#### (b) No Change Alternative:

The no change alternative would result in the Department being unable to fully recover its costs related to lake and streambed alteration agreements and to create confusion with the regulated community because without the proposed changes, the public may not be aware that fees are no longer required for timber harvest agreements.

#### (c) Consideration of Alternatives:

In view of information the Department currently possesses, no reasonable alternative considered would be more effective in carrying out the purposes for which the amendments are proposed, or would be as effective as and less burdensome to the affected private persons than the proposed amendments.

### V. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action is an administrative adjustment of Department fees and will have no negative impact on the environment; therefore, no mitigation measures are needed.

### VI. Impact of the Regulation Changes

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories below have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States.

The proposed action to adjust the fees in Section 699.5, Title 14, CCR, will affect a relatively small number of individuals, businesses, and agencies engaged in projects which would require lake and streambed alteration agreements and payment of the corresponding fees. The fees will increase by approximately 9.5%. The fee increase takes into account only the incremental change in the Implicit Price Deflator (IPD) over the past four years as authorized by statute.

Considering the relatively small number of agreements issued over the entire state, this proposal is economically neutral to business. Therefore, the proposed action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

- (b) Impact on the Creation or Elimination of Jobs within the State, the Creation of new Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The proposed action only adjusts fees to account for inflation. The Department does not anticipate any impacts on the creation or elimination of jobs, the creation of new business, the elimination of existing businesses, the expansion of businesses in California; nor benefits to worker safety.

Health and Welfare of California Residents:

The Department anticipates benefits to the health and welfare of California residents by maintaining the Department's capacity to protect the state's aquatic and riparian habitats and the fish and wildlife resources that depend on them through the administration and enforcement of FGC section 1600 *et seq.*

Benefits to the Environment:

The Department anticipates benefits to the environment. It is the policy of this state to encourage the conservation and maintenance of lakes and streams, and the fish and wildlife resources that depend upon aquatic and riparian habitats, for their use and enjoyment by the public. The fee increases included in this rulemaking will enable the Department to recover its costs to administer and enforce FGC section 1600 *et seq.*

- (c) Cost Impacts on Representative Private Person or Business

The Department does not anticipate any significant cost impact to private persons or businesses who must comply with this proposed rulemaking.

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

There are no related costs or savings in Federal Funding to the State.

- (e) Other Nondiscretionary Costs/Savings to Local Agencies. None
- (f) Programs Mandated on Local Agencies or School Districts. None
- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed under Part 7 (commencing with Section 17500) of Division 4.

None.

- (h) Effect on Housing Costs. None.

## **INFORMATIVE DIGEST (Policy Statement Overview)**

Proposed Amendments to Section 699.5. Fees for Lake and Streambed Alteration Agreements:

Existing law allows the Department to charge a fee for the issuance of a Lake or Streambed Alteration Agreement. Sections 699.5(b), (c), (e), (f), (i), (j), and (k) specify fees which are subject to annual price adjustments in accordance with FGC Section 713. These fees have not been adjusted since 2009. The Department proposes to apply the annual price index for the four years 2010, 2011, 2012, and 2013 to these fees resulting in an amended fee schedule. Doing so will increase the fees in the fee schedule by approximately 9.5%.

Sections 699.5(d) and (g) include fees which as of July 1, 2013, are no longer chargeable to timber applicants by the Department because of Public Resources Code Section 4629.6(c). These fees will be deleted. The following statement is proposed to be added in both sections to reflect this change: "Pursuant to Public Resources Code section 4629.6, subdivision (c), no fee shall be required if the department received the notification after July 1, 2013. This includes a notification made to the department pursuant to Fish and Game Code section 1602 or section 1611."

### **BENEFITS OF THE PROPOSED ACTION:**

The Department needs to adjust the fees specified in Section 699.5 for inflation in order to recover the total costs it incurs to administer and enforce Section 1600 *et seq.* If the Department does not adjust the fees, it will experience a budget shortfall that will affect its ability to administer and enforce the regulations, the purpose of which is to protect and conserve the state's fish and wildlife resources

The Department does not anticipate benefits to the protection of worker safety, the prevention of discrimination, the promotion of fairness or social equity, or to the increase in openness and transparency in business and government. The Department anticipates nonmonetary benefits to the health and welfare of California residents through the protection of the state's aquatic and riparian habitats and the fish and wildlife resources that depend on them.

The Department anticipates benefits to the environment. It is the policy of this state to encourage the conservation and maintenance of lakes and streams, and the fish and wildlife resources that depend on aquatic and riparian habitats, for their use and enjoyment by the public. The fee increases included in this rulemaking will enable the Department to recover its costs to administer and enforce Section 1600 *et seq.*

## EVALUATION OF INCOMPATIBILITY WITH EXISTING REGULATIONS:

The Department has reviewed Title 14, CCR, and determined that the proposed amendments to Section 699.5 are neither inconsistent nor incompatible with existing state regulations.

Section 699.5, Title 14, CCR, is amended as follows:

**§ 699.5. Fees for Lake and Streambed Alteration Agreements.**

**... [No change to subsection 699.5(a)]**

(b) Standard Agreement.

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

(A) ~~\$224.00~~ \$245.50 if the project costs less than \$5,000.

(B) ~~\$280.25~~ \$307.25 if the project costs from \$5,000 to less than \$10,000.

(C) ~~\$560.25~~ \$613.75 if the project costs from \$10,000 to less than \$25,000.

(D) ~~\$840.25~~ \$921.00 if the project costs from \$25,000 to less than \$100,000.

(E) ~~\$1,233.25~~ \$1,351.50 if the project costs from \$100,000 to less than \$200,000.

(F) ~~\$1,673.00~~ \$1,833.25 if the project costs from \$200,000 to less than \$350,000.

(G) ~~\$2,521.50~~ \$2,763.25 if the project costs from \$350,000 to less than \$500,000.

(H) ~~\$4,482.75~~ \$4,912.25 if the project costs \$500,000 or more.

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

(A) ~~\$2,689.50~~ \$2,947.50 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 ~~\$224.00~~ \$245.50, the fee for the second project would be ~~\$280.25~~ \$307.25, and the fee for the third project would be ~~\$560.25~~ \$613.75. Hence, the total fee the entity would need to submit with the notification that identifies those three projects would be ~~\$1,064.50~~ \$1,166.50.

(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) ~~\$560.25~~ \$613.75 if the annual extraction volume identified in the notification is less than 500 cubic yards.

(B) ~~\$1,120.50~~ \$1,228.00 if the annual extraction volume identified in the notification is 500 to less than 1,000 cubic yards.

(C) ~~\$2,801.75~~ \$3,070.50 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) ~~\$11,206.75~~ \$12,280.75 base fee, plus an annual fee of ~~\$1,120.50~~ \$1,228.00.

(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: Pursuant to Public Resources Code section 4629.6, subdivision (c), no fee shall be required if the department received the notification after July 1, 2013. This includes a notification made to the department pursuant to Fish and Game Code section 1602 or section 1611.

~~(A) \$1,345.25 base fee, plus \$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) ~~\$1,345.25~~ \$1,474.25 base fee, plus ~~\$112.00~~ \$122.75 for each maintenance project completed per calendar year.

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

(A) ~~\$2,689.50~~ \$2,947.50 base fee, plus ~~\$112.00~~ \$122.75 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

(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) ~~\$33,620.25~~ \$36,842.00 base fee, plus:

1. An annual fee of ~~\$2,801.50~~ \$3,070.00, unless the department specifies otherwise.

2. ~~\$280.25~~ \$307.25 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: Pursuant to Public Resources Code section 4629.6, subdivision (c), no fee shall be required if the department received the notification after July 1, 2013. This includes a notification made to the department pursuant to Fish and Game Code section 1602 or section 1611.

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

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

~~2. \$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) ~~\$224.00~~ \$245.50.

(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) ~~\$168.00~~ \$184.00.

(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.

(1) Fee:

(A) ~~\$560.25~~ \$613.75.

(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.

**... [No change to subsections 699.5(l), (m) and (n)]**

Note: Authority cited: ~~Section~~ Sections 713 and 1609, Fish and Game Code. Section 21089, Public Resources Code. Reference: Section 1609, Fish and Game Code. ~~Section~~ Sections 4629.6(c) and 21089, Public Resources Code.