



CALIFORNIA
ASSOCIATION
of WINEGRAPE
GROWERS



Fresh produce from our families to yours

Filed via: Regulations@wildlife.ca.gov on June 18th, 2024

California Department of Fish and Wildlife (CDFW)
Regulations Unit
Attn: Mike Randall, Analyst
P.O. Box 944209
Sacramento, CA 94244-2090

Re: May 3rd, 2024 Notice of Proposed Rulemaking for the California Department of Fish and Wildlife

Introduction

The California Department of Fish and Wildlife (Department) has published the Notice of Proposed Action to add Section 723 to Title 14, California Code of Regulations (CCR). Fish and Game Code (FGC) Section 1612 authorizes the Department to suspend or revoke a permit, referred to as a “lake or streambed alteration agreement” (LSA Agreement), if the Department

determines the permittee is not in compliance with its terms or has failed to provide the Department timely status reports as required by subdivision (g) of FGC Section 1605. Statute further requires that the Department must provide to the entity a written notice that explains the basis for a suspension or revocation, and to provide the entity with an opportunity to correct any deficiency before the department suspends or revokes the LSA Agreement.

Fish and Game Code (FGC) Section 1612 was enacted in 2004 and required the Department to adopt regulations establishing the procedure for suspension or revocation of an LSA Agreement. However, the Department has not proposed such regulations until now.

Background

The signatories on this comment letter represent a wide range of industries and thousands of businesses based in California's rural communities that will be impacted by these proposed regulations, including over a thousand independently owned and operated small businesses.

Within the Economic Impact Analysis for this rulemaking, the Department concludes that the proposed regulation will not have any adverse economic impact on any business.¹ Given that LSA Agreements, when applicable, are required conditions for the legal operation of our members' businesses, and given the significant lack of due process protections proposed in this rulemaking, it is our opinion that the prospective impacts to businesses from the suspension or revocation of an LSA Agreement, particularly if these suspensions and revocations lack adequate due process, could indeed be significant.

Suspension or revocation of LSA Agreements can lead to suspension or revocation of other licenses, and interruption of business operations. In the case of small businesses, interrupted operations could lead to the closure of the business. For cottage industry operators and homestead commercial farms, the closure of the business could lead to the need for the individual or family to sell their property and relocate, prospectively displacing individuals and families from their homes and communities. It is imperative that adequate due process protections are afforded and are especially pronounced for small businesses that could be at risk of suspension or revocation of other licenses as a result of a suspension or revocation of an LSA Agreement.

We appreciate the opportunity to provide comments on this rulemaking on behalf of our collective membership. Our specific recommendations are underlined in bold for emphasis and ease of reference.

¹ Initial Statement of Reasons for Regulatory Action Add Section 723 Title 14, California Code of Regulations Re: Suspension or Revocation of Lake and Streambed Alteration Agreements, pages 17-18.

Comments

1. Lack of an Appeals Process

We are alarmed at the lack of an appeals process for suspension and revocations. Due to the gravity of potential impacts to businesses, we believe it is critical that any administrative actions to suspend or revoke LSA Agreements are accompanied by adequate due process.

RECOMMENDATION: We urge the Department to amend the proposed regulations to establish an appeals process for the suspension or revocation of LSA Agreements or arbitration modeled under Fish and Game Code Section 1603.

2. Prospective Application of New Procedures

It is critical that existing LSA Agreements are honored, including the terms and procedures in place when those agreements were enacted, which should supersede any new administrative procedures put in place through this, or any future rulemaking.

RECOMMENDATION: We recommend the Department amend the proposed regulations to stipulate that new procedures surrounding suspension and revocation of LSA Agreements are purely prospective and apply only to new LSA Agreements, and are not applicable to extensions or amendments of existing LSA Agreements.

3. Effective Dates and Response Timeline

The regulations propose timelines for the effective date of suspensions and revocations to be 10 days from the date of notification. Our businesses are located in rural communities that frequently face road access challenges and interruptions in basic services, including mail service, due to adverse weather, wildfires etc., and given that these notifications pertain to suspensions and revocations of LSA Agreements, we believe that providing only 10 days from notification to effective date is insufficient. Additionally, this timeframe is inconsistent with other administrative procedures for permit and licensing suspensions and revocations, which frequently provide a minimum of 30 days from notification to effective suspension or revocation².

RECOMMENDATION: We recommend the Department amend proposed subsection (e)(2) and (g)(2) to read that the effective date of suspensions and revocations will be 30 days from the date of notification of suspension or revocation.

² Cal. Code Regs. tit. 4 § 17801

RECOMMENDATION: We recommend the Department amend the proposed regulations to include a specified time allowance of 30 days to respond to a notice of non-compliance.

4. “Stepped” Process

We appreciate and support the Department’s proposed “stepped” process, whereby the Department must first suspend an LSA Agreement before it is revoked.

5. Establishing Minimum Timelines and Violation Categorization

The Initial Statement of Reasons provides rationale for the approach to determining timelines associated with corrections and extensions which are proposed to be determined solely at the discretion of the Department, which shall consider a number of factors. While we appreciate the proposed factors that the Department shall consider in making these timeline determinations, we are concerned with this blanket discretionary approach and the lack of prescribed minimum timelines or basic categorization of violations based on harm.

RECOMMENDATION: We recommend that the Department amend the proposed regulations to include a minimum reasonable specified time period to correct deficiencies, with discretion for the Department to set a longer timeline beyond the minimum timeline based on the listed factors, while also preserving the ability for permittees to request additional time for corrections, to be granted at the discretion of the Department.

RECOMMENDATION: We recommend that the Department amend the proposed regulations to establish basic categories of violations defined according to level of harm to fish and wildlife resources in order to guide all discretionary decisions by the Department related to whether to suspend, or revoke an LSA Agreement, whether to grant more than 30 days to correct an alleged violation, and other decisions under this section.

6. Determinations by CDFW Regional Managers

The gravity of these discretionary suspension and revocation determinations by the Department warrant specification in the regulations that these determinations be made by California Department of Fish and Wildlife Regional Managers.

RECOMMENDATION: We recommend that the proposed regulations be amended to specify that suspension and revocation determinations will be made exclusively by CDFW Regional Managers.

Sincerely,



Genine Coleman
Executive Director
Origins Council



Natalynne DeLapp
Executive Director
Humboldt County Growers Alliance



Oliver Bates
President
Big Sur Farmers Association



Diana Gamzon
Executive Director
Nevada County Cannabis Alliance



Steve Amato
President
Mendocino Cannabis Alliance



Adrien Keys
President
Trinity County Agricultural Alliance



Richard Filgas
Policy Advocate
California Farm Bureau Federation



Michael Miller
Director of Government Affairs
California Association of Winegrape Growers



Gail Delihant
Sr. Director, CA Government Affairs
Western Growers Association