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STATE OF CALIFORNIA
Fish and Game Commission

October 13, 2011

This is to provide you with a copy of the notice of proposed regulatory action relative to sections 550, 550.5, 551, 552, 553, 630, and 703, Title 14, California Code of Regulations, relating to Public Use of Department of Fish and Game Lands, which will be published in the California Regulatory Notice Register on October 14, 2011.

Please note the dates of the public hearings related to this matter and associated deadlines for receipt of written comments.

Dr. Eric Loft, Chief, Wildlife Branch, Department of Fish and Game, phone (916) 445-3555, has been designated to respond to questions on the substance of the proposed regulations.

Sincerely,

Sheri Tiemann
Staff Services Analyst

Attachment

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BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

TITLE 14. Fish and Game Commission
Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 203, 355, 710, 710.5, 710.7, 713, 1002, 1050, 1053, 1526, 1528, 1530, 1570, 1571, 1572, 1580, 1581, 1583, 1585, 1761, 1764, 1765, 1907, 2118, 2120, 2122, 2150, 2150.2, 2157, 2190, and 10504 of the Fish and Game Code and to implement, interpret or make specific sections 355, 711, 713, 1050, 1053, 1055.3, 1526, 1528, 1530, 1570, 1571,1572, 1580, 1581, 1582, 1583, 1584,1585, 1590, 1591, 1764, 1765, 2006, 2116, 2116.5, 2117, 2118, 2120, 2125, 2150, 2150.2, 2151, 2157, 2190, 2193, 2271, 10504, 12000, and 12002 of the Fish and Game Code, and Section 14998, Government Code, proposes to amend sections 550, 551, 552, 630 and703, add Section 550.5 and repeal Section 553, Title 14, California Code of Regulations, relating to Public Use of Department of Fish and Game Lands.

Informative Digest/Policy Statement Overview

The majority of acreage administered by the Department of Fish and Game is included in either wildlife areas or ecological reserves. Wildlife areas are acquired primarily for wildlife conservation and providing opportunities for compatible recreational uses (Fish and Game Code 1525 -1530). There are currently 110 wildlife areas that encompass approximately 707,071 acres. Ecological reserves are acquired primarily for the purpose of protecting rare and/or endangered native plant and animal species and specialized habitat types (Fish and Game Code 1580). Other purposes for the establishment of ecological reserves are the observation of native plants and animals by the general public and scientific research (Fish and Game Code1584). The ecological reserves currently include 130 properties, encompassing approximately 204,585 acres. The Department also administers public access lands and properties which are not yet designated. These are typically properties that have been recently acquired but have not yet been designated as either wildlife areas or ecological reserves by the Fish and Game Commission.

The regulations that govern public uses of lands administered by the Department are in Sections 550, 551, 552, 553, and 630 of Title 14 of the California Code of Regulations (CCR). Currently, Sections 550, 551, and 553 pertain to wildlife areas that are owned or managed by the Department. Section 552 pertains to National Wildlife Refuges where the Department manages hunting programs, and Section 630 pertains to the Department's ecological reserves.

If approved, these proposed regulation changes would:

1) Consolidate and improve the consistency and clarity of the regulations that govern public use of lands owned and/or managed by the Department of Fish and Game, and remove existing regulations that are duplicative or unnecessary. The sections of Title 14, CCR that would be "cleaned-up" include 550, 551, 552, 553, and 630. Section 553, Heenan Lake Wildlife Area, is being moved to Section 551.

2) Standardize the process used to issue special use permits for activities or group events on Department lands that are outside of compatible activities defined in the proposed general regulations in Section 550 (b)(2), Title 14. Fees associated with Special Use Permits are proposed in Section 703.

3) Designate seven properties that have been acquired relatively recently by the Department as wildlife areas or ecological reserves (Sections 551(b) and 630(b) respectively of Title 14).

4) Change site-specific regulations for the Magnesia Springs Ecological Reserve, Riverside County (currently Section 630(b)(73), Title 14) to correct the names of trails that have been rerouted per the Coachella Valley Multiple Species Habitat Conservation Plan and Natural Communities Conservation Plan.

5) Change site-specific regulations for the Palo Verde Ecological Reserve, Riverside County (currently Section 630(b)(87), Title 14) with respect to method-of-take and species that are hunted on the property. These changes are proposed to promote visitor safety.

Background information is provided below to explain the need for the proposed regulation changes. The consolidation and clarification of the regulations and standardizing the procedures for addressing requests for special events or uses on Department lands will not result in any new uses of the Department's land and will not remove existing uses. Because these proposed changes are meant to clarify existing regulations (and designate recently acquired lands) rather than change on-the-ground uses, the proposed regulation changes will not have an adverse effect on the environment and are not subject to a separate review process under the California Environmental Quality Act (CEQA). This is consistent with the substitution of regulatory documents of certified programs for Environmental Impact Reports or Negative Declarations provided for in Section 15252 of the California Code of Regulations.

Consolidate and Clarify Land Regulations

These sections include many subsections that are unnecessary because they duplicate other regulations or information in statutes, or because they address management issues that are more appropriate to address in individual land management plans (e.g. vegetation management by Department staff). The manner in which the regulations are organized makes it difficult for the public to find information on specific uses and know what is allowed or prohibited on Department lands. Inconsistencies throughout the regulations make it difficult for staff to interpret what is allowable resulting in potential enforcement issues. The quantity, lack of clarity and inconsistencies in the existing regulations make it difficult to assess whether new proposed regulations are consistent and non-duplicative.

Examples of Current Regulation Shortcomings:

Inconsistent:

1) Recently acquired lands not yet designated as wildlife areas or ecological reserves are referred to as "undesignated lands." They are not regulated by Sections 550, 551, and 552, Title 14 which cover designated wildlife areas and the federal refuges with hunt programs managed by the Department. Undesignated lands are also not covered by Section 630, Title 14 which regulates the use of ecological reserves. Even though the lands have been acquired for conservation purposes, undesignated lands do not currently receive the same level of legal protection as designated properties. General regulations need to cover undesignated Department lands as well as the lands that are designated.

2) Section 630(a)(7) requires that visitors stay on designated trails in parts of ecological reserves that are designated as being especially environmentally sensitive. There are no comparable regulations for wildlife areas although they may include areas where it is important for visitors to stay on designated trails.

3) In Section 630(b), there are over twenty nearly identical regulations for research permits on individual ecological reserves. Research permits are not mentioned in the sections that govern wildlife areas (Sections 550 and 551) or the general regulations for ecological reserves (Section 630 (a)). In practice, the Department oversees research conducted on all of its properties, however this should be clearly stated in the regulations. Existing regulations regarding research on Department lands contain problems of both duplication and inconsistency.

4) Section 550(b)(5) requires obtaining written authorization from the Regional Manager to hold an organized event on a wildlife area. There is no general or site-specific regulation in Section 630 that requires obtaining written authorization or a permit to conduct a special use or hold an event on an ecological reserve. In practice, the Department requires written permission for special uses or events on ecological reserves, but this should be clarified in the regulations.

5) Several regulations prohibit the application of pesticides on Department lands with varying exceptions made for applications conducted by public agency employees. Section 550(b)(15) specifies that pesticides can only be used in accordance with a Department-approved program. Section 630(a)(13) requires that pesticide use be authorized by either the Department or the Commission for management or public safety, and Sections 630(b)(24) and (25) require authorization from the Commission for pesticide applications on two ecological reserves. Although the common intent is to prohibit members of the general public from applying pesticides on Department lands, the existing regulations are inconsistent with regard to the Department's use of pesticides. It should be noted that pesticide use is analyzed in the land management plans for each property, which undergo public review through the CEQA process and that pesticide use by the Department is conducted in compliance with local, state and federal laws.

Confusing:

6) Multiple subsections of Sections 550, 551 and 630, Title 14 address the inter-related topics of research, educational activities and collecting. Differences in wording among these sections can be confusing to the public and Department staff. For example

- Section 550 does not contain a regulation that addresses collecting animals outside of hunting or fishing (e.g. for educational or scientific purposes).
- Section 550(b)(10)(A) states that plants can only be collected under the direction of the area manager or to build hunting blinds.
- Section 630 has one subsection (a)(3) that explains that collecting anything on an ecological reserve requires a scientific collecting permit obtained per Section 650, Title 14.
- Section 630(b) includes multiple site specific regulations that allow collecting for research or educational purposes under written authorization, but those subsections do not provide any specific directions. Examples of these subsections include 630(b)(29) and 630(b)(30).

7) Bicycles are currently allowed on "designated access" roads on ecological reserves (Sec 630(a)(4), Title 14). Currently nine out of the 130 ecological reserves have site specific regulations that allow bicycles on "designated trails" and five of those specifically describe the trails in the regulation. The vast majority of ecological reserves do not have maps, signs or regulations that designate particular roads or trails as access roads or bicycle trails. A similar state of confusion exists for bicycles on wildlife areas. Based on guidance about the purpose of the Department's lands in Sections 1525 et. seq. and 1580 et. seq., Fish and Game Code and the acquisition documents and management plans written for these properties, one can reasonably conclude that bicycle riding does not align with the purposes for which lands are acquired by the Department, though it may not be incompatible on some areas under certain conditions. Under the proposed general regulations that apply to all Department lands (proposed Section 550(bb), Title 14) bicycles are only allowed on properties that have currently have site specific regulations allowing them (proposed Sections 551(l), (552), and 630(g)). Going forward, the use of bicycles will need to be evaluated under CEQA prior to adding them or removing them as a public use on specific Wildlife Areas and Ecological Reserves.

Unnecessary:

8) Duplication among regulations:

a. There are general regulations for fires on both ecological reserves (Section 630(a)(19)) and wildlife areas (Section 550 (b)(13)) There are 15 site specific regulations about fires in Sections 551(q) and 630(b). All of these regulations share the same intent of preventing wildfires on Department lands.

b. The general regulations in Sections 630(a) and 550(b) have many nearly identical regulations regarding destructive activities such as littering, dumping trash, destruction of habitat, archeological artifacts, vandalism, etc. It would be more clear and efficient to have a single set of regulations that apply to all Department lands that prohibit these activities.

9) Site Specific Regulations for Generally Incompatible Uses

b. Some site-specific regulations that prohibit specific activities are unnecessary because the activity is incompatible with the purpose of an ecological reserve. Incompatible uses are prohibited in general regulations and legislative statute. An example is current Section 630(b)(9)(l), Title 14 which prohibits the use of motorized model rockets and aircraft on the Ballona Wetlands Ecological Reserve. The preamble of Section 630 states that "public entry and use of ecological reserves shall be compatible with the primary purposes of such reserves." Also, Regional Manager's have the authority to prohibit incompatible uses (current Section 630(a)(22)). A specific regulation should not be necessary to prohibit the use of motorized model rockets and aircraft on the ecological reserve because it is incompatible with the primary purpose of the reserve.

10) Explicitly covered in statute and land management plans

Regulations that address an activity that is already very explicitly addressed in statute are not necessary. An example is a regulation authorizing the Department to construct facilities on the Rancho Jamul Ecological Reserve (Section 630(b)(99)(C), Title 14). Section 1584 of the Fish and Game Code clearly authorizes the Department to construct

such facilities, where appropriate on ecological reserves. Beyond the statute, the construction of such facilities is addressed in each property's land management plan, and associated environmental documents, which undergo public review in accordance with CEQA.

11) Activities better addressed on a site specific basis in land management plans:

a. Some existing regulations address management activities conducted by the Department that must also be analyzed in land management plans and associated environmental documents prepared for each property. Some of these management activities are also regulated by other agencies. An example of this is language in the existing regulations that addresses the use of pesticides by the department (Sections 550(b)(15), 630(a)(13), 630(b)(24), and 630(b)(25)). Pesticide use is analyzed in the land management plans for each property, which undergo public review through the CEQA process and pesticide use by the Department is conducted in compliance with local, state and federal laws.

Approach to Consolidate and Clarify the Regulations:

The regulatory language in this proposal consolidates the general regulations for wildlife areas and ecological reserves (currently Sections 550(b), 551(b) through 551(p), and 630(a), Title 14). The intent is to provide a single set of general regulations in Section 550, Title 14 that apply to all properties owned or managed by the Department of Fish and Game.

In addition to eliminating duplication among the general regulations, site specific regulations in the current Sections 551(q), 552, 553, and 630(b) that are duplicated for many individual properties are consolidated into the proposed general regulations in Section 550. For example, instead of the 24 site-specific regulations currently addressing research permits in Section 630(b), there will be one regulation that addresses research permits for all Department lands in Section 550(f).

Regulations pertaining only to wildlife areas will remain in Section 551, and regulations pertaining only to ecological reserves will remain in Section 630. Site specific regulations will be retained if they address a unique need for a particular property. New tables are included to assist users with finding regulations on specific uses or properties.

The consolidation described above reduces the overall length of the regulations, but that reduction is somewhat offset by providing more definitions and specific direction on issues such as research permits and special use permits. Overall, these changes should facilitate responsible use and management of the Department's lands. It is anticipated that the public and staff will find the proposed regulations easier to use and understand. It is important to note that this proposed "clean-up" of the regulations does not remove any existing public uses or add any new uses. Because no changes in existing environmental conditions are proposed with these changes, they do not require separate review under CEQA.

Standardize Processing and Recover Costs for Special Use Permits

Individuals and organizations may desire to conduct events on Department lands which are outside of the routine uses of the property or involve large groups of people or domestic animals. Examples of these types of uses or events include field dog trials, organized horseback trail

rides, mountain bike access, running events (e.g. 10K runs), weddings and commercial filming. These special uses may conflict with routine uses and the conservation purposes of Department lands. However, in many cases, under specified conditions, these activities could be conducted in a manner that is consistent with the overall management of the properties. It should be noted that review of these requests, and the development and implementation of these conditions may require additional work by Department staff whose time is often fully committed under their existing workload. Lack of sufficient Department staff can be a limiting factor for authorizing these activities.

There currently are no statewide procedures for making or processing these requests. Fish and Game Code Sections 1528 and 1580 authorize the Department to operate wildlife areas and ecological reserves, respectively, for the purposes described in those sections. Conservation of natural resources is a primary purpose of both wildlife areas and ecological reserves. Current Section 550(b)(2), Title 14 authorizes the Department to restrict entry into wildlife areas for safety and management purposes and similar language exists for ecological reserves in Section 630(a)(10). Section 550(b)(5) for wildlife areas currently requires prior written authorization from the Regional Manager for special events, but it does not provide guidance on how this authorization should be issued. The regulation does state that the activity must be compatible with the management objectives of the property. Section 550(b)(14) states that "special permits" are required for field dog trials on wildlife areas, but it provides no information about what these permits are or how to obtain them. Special uses or events are not addressed in the current regulations for ecological reserves (Section 630), although the Department does receive and respond to requests for special uses of these properties.

In order for the Department to meet its public trust responsibilities with regard to lands management, it is necessary for the regulations in Title 14 to provide a consistent method for authorizing special uses of all Department lands.

Proposed Sections 550(d) and 550.5(d), Title 14 clarify when a special use permit is necessary and standardize how special use permits are applied for, evaluated and processed. A definition of special uses is provided in proposed Section 550(b)(7). This does not introduce a new use because, as discussed above, the Department has authorization to administer entry and uses of its lands, and existing regulations specifically direct the public to apply for permits or written authorization for group activities and other special uses on wildlife areas. In practice, individuals and groups request authorization to conduct special use activities on ecological reserves, although this is not specifically addressed in the current general regulations for ecological reserves (Section 630, Title 14). There is a lack of direction in the existing regulations for both the public and staff in how to handle these requests for all types of Department lands.

There is also no mechanism at present for the Department to recover the costs of reviewing special use requests, meeting with applicants, writing conditions and conducting on-site work required for special uses (e.g. posting and removing signs, assisting with or monitoring the special use, clean up or repairs). Section 710 of the Fish and Game Code discusses the need to develop funding sources to cover the Department's costs. Section 1050 of the Fish and Game Code authorizes the Commission to set fees to cover reasonable costs incurred by the Department to implement and administer permitting activities. Fish and Game Code Section 1528 authorizes the Commission to set fees for any use privileges on wildlife areas and for the Department to collect fees. Section 1585 states that the Department can collect fees for selected ecological reserves.

The proposed regulations introduce an application fee and a special use permit fee to cover the

Department's costs for reviewing and processing an application to conduct special uses on Department lands. The proposed fees would be added to Section 703, Title 14. The tasks involved are listed below ("TASKS PERFORMED BY DEPARTMENT STAFF"). The applicant would submit a filing fee ($58.71, per Sections 699 and 704, Title 14), with a permit application to the appropriate Regional office. A Special Use Permit fee would only be paid if the applicant receives notice from the Regional office that the Department intends to approve the permit and allow the special use. The proposed application form, standard permit conditions and related attachments that would be provided to the applicant are attached to this Initial Statement of Reasons.

If the Department intends to issue a special use permit, the Department's Regional staff will send a draft permit to the applicant that will include all terms and conditions, including any that are special or unique to that use or that site, and notification of the permit fee and any other costs or deposits that are due prior to the permit being issued. If the applicant accepts the terms and conditions of the permit, he or she signs the acceptance statement on Attachment C and returns it to the Regional office with the draft permit. Once Attachment C is signed and any fees, costs and/or deposits are paid, the Regional Manager or authorized representative will sign and issue the final approved permit. It should be noted that educational activities are listed as a compatible use in proposed Section 550(b)(2) and will not require a special use permit, though written authorization from the Regional Manager or designee will be required per proposed Section 550(e),Title 14.

If the Department denies a special use permit, the Regional Manager or designee will send notification to the applicant explaining the reason that the permit was denied. The criteria for approving a special use permit application are included in proposed Section 550.5(d)(3)(A).

Proposed regulations (Section 550.5(d)) include by reference a special use permit application form, a supplementary form for special uses that are expected to provide a profit to the applicant, and three additional attachments:

> Attachment A: Explains the process for obtaining a special use permit and the Permit's standard terms and conditions.
>
> Attachment B: Instructs the applicant on determining which Regional office special use permit applications should be sent to, and provides the addresses for the Regional offices.
>
> Attachment C: Applicant's acceptance of the terms, conditions, fees and any other costs for the special use permit. This form is not signed and submitted until after the applicant receives a draft permit from the Department with all of the special use permit conditions and costs included.

The permit application and many of the standard terms and conditions were adapted from similar processes and programs elsewhere in the State.

The permit fee calculations below assume typical costs for uncomplicated reviews, setting of conditions, and projects that do not require staff time beyond the tasks listed below ("TASKS PERFORMED BY DEPARTMENT STAFF"). The proposed regulations in Section 550.5(d) allow the Department to recover additional costs that might be incurred and also to collect a refundable cleaning/damage deposit. Information fields for Department staff to fill out are

provided in the permit section of the proposed special use permit application form for the purpose of explaining any additional cost or deposit to the applicant. Examples of additional costs are site preparation (e.g. posting and subsequently removing signs), monitoring the special use, cleaning up or conducting repairs afterwards as a result of the special use. On properties that require a per person day use fee, the special use permit and any additional charges are in addition to the per person day use fee. There are two types of special use permits proposed:

Special Use Type 1 – Permit Fee $51.00

A "Type 1" special use meets all of the following criteria:

- 30 or fewer visitors on-site,
- ten or fewer (0-10) animals (such as dogs or horses) or bicycles (or other pedaled vehicle) in total,
- does not require the use of animals, bicycles, vehicles, or large equipment outside of designated parking areas, roads, trails, or areas authorized for visitor use, and
- does not require use of the site for more than one calendar day during regular operating hours for the subject property. Visitor is defined in Section 550(a)(5), Title 14.

Special Use Type 2 – Permit Fee $386.50

"Type 2" special uses involve any of the following:

- over 30 visitors on-site,
- over ten bicycles or animals in total,
- requires the use of animals, bicycles, vehicles, or large equipment outside of designated parking areas, roads, trails, or areas authorized for visitor use, and
- use of the site for more than one calendar day.

The fee calculations are presented below:

TASKS PERFORMED BY DEPARTMENT STAFF:

- Application Review
- Site visit, phone conversations, e-mails with Applicant
- Notify other Department staff (law enforcement, other land management staff)
- Evaluate any policy issues and consult with Department staff as needed
- Write any special conditions of permit
- Prepare written notification to applicant
- Review and approval of permit by management staff
- Distribution and filing of paperwork
- Fee processing

Assume lead staff person for processing special use permit applications will be a Habitat Supervisor II, Interpreter II, Associate Biologist, Environmental Scientist Range B, Environmental Scientist Range C, Senior Biologist, or Staff Environmental Scientist.

Special Use Permit Cost - Special Use Permit Fee: Type 1		
Lead Staff Person (Interpreter II, Associate Biologist, Sr, Biologist, Environmental Scientist, Staff E.S., or Habitat Supervisor II)	1 hour @ $40/hr.[1]	$40.00
Environmental Program Manager	½ hour @ $53/hr	$26.50
Regional Manager	¼ hour @ $57/hr	$12.00
Office Technician	½ hour @ 23/hr	$11.50
Subtotal		**90.00**
Overhead	20%[2]	18.00
Application Fee Surcharge[3]	3% of $57.00	$1.71
Total Cost		$109.71
Application Fee + Surcharge [3]	$57.00 + $1.71	($58.71)
Permit Fee		**$51.00**

Special Use Permit Cost - Special Use Permit Fee: Type 2		
Interpreter II, Associate Biologist, Senior Biologist, Environmental Scientist, Staff E.S., or Habitat Supervisor II,	6 hours @ $40.00/hr.[1]	$240.00
Environmental Program Manager	1 hour @ $53/hr	$53.00
Regional Manager	½ hour @ $57/hr	$28.50
Office Technician	1 hour @ 23/hr	$23.00
Vehicle expenses	50 miles @ $0.50/mile	$25.00
Subtotal		**369.50**
Overhead	20%[2]	74.00
Application Fee Surcharge[3]	3% of $57.00	$1.71
Total Cost		$109.71
Application Fee + Surcharge [3]	$57.00 + $1.71	($58.71)
Permit Fee		$386.50

[1]Hourly rate = Monthly salary ÷ 174 hours/month x 1.33% (benefits)
$30/hr = median salary for classifications listed for "lead staff person"
$40/hr = median salary for Environmental Program Manager 1
$43/hr = median salary for Regional Managers (Classification = CEA)
$17/hr = median salary for Office Technician
Salaries for civil service classifications accessed at www.spb.ca.gov on April 29, 2011
2009 salaries for current Regional Managers: www.sacbee.com on April 29, 2011
[2]Estimated Department overhead rate = 20%
[3]$57 of the permit cost is recovered by a non-refundable application fee, based on Title 14, Section 699. This fee will be processed through the Department's Automated License Data System and a $1.71 surcharge will be added to the application fee per Section 704, Title 14.

Designation of Properties

The Department proposes designations of the recently acquired lands described below as wildlife areas per Fish and Game Code Sections 1525 and 1526 or ecological reserves per Fish and Game Code Section 1580. Wildlife areas are currently designated by addition to Section 550(a), Title 14. The list of designated wildlife areas is proposed for inclusion in Section 551(b) under the proposed regulation changes. Ecological reserves will continue to be designated through addition to Section 630(b) under the proposed regulations. A compilation of Land Management Summaries and maps for the properties that are proposed for designation is included as an attachment to this document.

Wildlife Areas (Proposed Section 551b)

1) Designate the Burcham and Wheeler Flats Wildlife Area, Mono County (Type C).

The proposed Burcham and Wheeler Flats Wildlife Area (BWFWA) is approximately 1,160 acres of sagebrush scrub and meadow habitat located north of the town of Bridgeport in Mono County. The primary management objective for the proposed BWFWA is to conserve and enhance essential wildlife habitat for greater sage grouse (*Centrocercus urophasianus*), pygmy rabbit (*Brachylagus idahoensis)*, and other sagebrush obligate species; and, to retain dispersal corridors for migratory mule deer and large carnivores. The area once supported six historical sage grouse strutting grounds, of which two are currently active. BWFWA still supports nesting and brood rearing habitat (mostly wet meadows) as well as winter habitat for this species. An estimated 3,500-4,500 deer (*Odocoileus hemionus*) from the East and West Walker deer herds migrate through the area. In addition, the area functions as a portion of the spring and fall holding area for these herds, as well as summer range fawning habitat.

The property is surrounded by U.S. Forest Service and/or private land and has been used by the general public in an uncontrolled manner (e.g., illegal grazing, destruction of signs and fencing, off-road vehicle use). Designation as a wildlife area under the proposed Section 551, Title 14 will bring the property under the protection of the general regulations in Sections 550 and 551. This will assist the Department in controlling destructive activities on-site and better protect federal and state listed species, and the habitat necessary to ensure their continued existence.

Ecological Reserves (proposed Section 630(b))

1) Designate the Bakersfield Cactus Ecological Reserve, Kern County

The primary management objective for the proposed 658 acre Bakersfield Cactus Ecological Reserve is the protection and long-term preservation of the Bakersfield cactus (*Opuntia basilaris* var. *treleasei*), which is both state and federally listed as Endangered. Additional objectives include preserving San Joaquin Valley upland habitat features, protecting other special status species and wildlife corridors, and allowing appropriate public access and use. The land is currently undesignated Department-owned property located near a high density urban setting and used by the general public in an uncontrolled manner (e.g., illegal dumping, horseback riding, dogs off leash, destruction of signs and fencing, off-road vehicle use). The property's designation as an ecological reserve in Section 630(b), Title 14 will bring it under the protection of the general regulations for Department lands (proposed Section 550), and other pertinent regulations in Section 630. This will help to alleviate damaging activities and better protect federal and state listed species and their habitats.

2) Designate the Cambria Pines Ecological Reserve, San Luis Obispo County

The primary management objective for the proposed 106 acre Cambria Pines Ecological Reserve is the protection and long-term preservation of a native stand of Monterey pines (*Pinus radiata*) and associated botanical resources. Native Monterey pine forests occupy a small portion of their historical range and are currently restricted to five coastal locations. A secondary objective is to directly and indirectly protect the resources of Santa Rosa Creek through watershed protection and by not utilizing the existing wells on site so that water in this aquifer will be available for the creek. Protection and enhancement of Santa Rosa Creek will provide direct benefits to a number of creek and riparian dependent species including southern steelhead (*Oncorhynchus mykiss irideus*), California red-legged frog (*Rana draytonii*), western pond turtle (*Emys marmorata*), two-striped garter snake (*Thamnophis hammondii*), and yellow warbler (*Dendroica petechia*). The land is currently undesignated Department-owned property located near a high density urban setting and used by the general public in an uncontrolled manner (e.g., illegal dumping, horseback riding, dogs off leash, destruction of signs and fencing, off-road vehicle use). The property's designation as an ecological reserve in Section 630(b), Title 14 will bring it under the protection of the general regulations for Department lands (proposed Section 550), and other pertinent regulations in Section 630. This will help to alleviate damaging activities and better protect sensitive species and their habitats.

3) Designate the Liberty Island Ecological Reserve, Solano County.

Liberty Island is a 5,209 acre inundated island at the southern end of the Yolo Bypass (Bypass) in the northern Sacramento-San Joaquin Delta. The portion of the island owned by the Department is 4,308 acres in Solano County. The area lies approximately twelve miles south-southeast of the town of Dixon, ten miles north of Rio Vista. It is accessible via county roads that intersect State Route 113 in Solano County. The property is bound by Liberty Cut, Prospect Slough, Little Holland Tract, and the western levee of the Sacramento Deep Water Ship Channel (which is now the eastern Yolo Bypass levee) to the east. Shag Slough and the Western Bypass Levee bound Liberty Island on the west. The Yolo Bypass Wildlife Area, owned by the Department, lies to the north with agriculture and conservation properties lying directly between Liberty Island and Yolo Bypass Wildlife Area. The southern region of Liberty Island is predominately open water and stands at tidal and subtidal elevations. The area of the Island within Solano County is open to full tidal excursion.

The primary purpose for accepting transfer of the Liberty Island from the Trust for Public Lands was to protect the developing wetland for special status fish species. The U.S. Fish and Wildlife Service has classified lands including and near Liberty Island as "critical habitat" for the Central Valley fall-run chinook salmon (*Oncorhynchus tshawytscha)* and the Delta smelt (*Hypomesus transpacificus)*. The National Oceanic and Atmospheric Administration has listed as threatened the Southern Distinct Population Segment of North American Green Sturgeon (*Acipenser medirostris)* and designated Yolo Bypass lands as critical habitat for the species.

Positioned at the downstream end of the Yolo Bypass, Liberty Island is within the statutorily defined flood easement protecting urban Sacramento. The Department recognizes the importance of flood control and acknowledges Liberty Island habitat management constraints may be impacted by flood flow accommodation. Flooding is an important ecosystem process that shapes habitat structure and benefits fish and wildlife. The Department anticipates managing Liberty Island in a manner that is consistent with both flood protection and wildlife

needs.

Liberty Island currently supports significant existing wildlife and has outstanding potential for restoration, floodplain management, and endangered species recovery. Seven primary management concerns pertain to the Liberty Island Ecological Reserve (LIER):

- Endangered Species/ Critical Habitats: To protect, restore, and enhance native habitats, aid the recovery of federally and state listed endangered and threatened species.
- Biodiversity: To protect, manage, and restore the riparian woodlands, tidally-influenced wetlands, tidal open water, and non-tidal open water habitats representative of the biological diversity of the Sacramento/San Joaquin River Delta.
- Connectivity: Provide habitat linkages and migration corridors for wildlife in the Yolo Bypass and Cache Slough Complex to adjacent habitats.
- Cooperative Management: To coordinate land management activities with Federal, State, and local governments and agencies, private conservation organizations and citizens in support of fish and wildlife resource protection at the LIER.
- Wildlife: To provide breeding, migration, and wintering habitat for migratory and resident birds; aquatic habitat for spawning, rearing and refugia for endangered or threatened native fish, such as longfin smelt (*Spirinchus thaleichthys)*, delta smelt, Sacramento splittail (*Pogonichthys macrolepidotus)* and salmon; and, provide habitat for mammals such as otters, beaver, muskrat, and others.
- Public Use: To provide limited, safe, and high quality opportunities for compatible educational and recreational activities that foster public appreciation of the unique natural heritage of the Bay/Delta Ecoregion.
    - Hunting at such times and in specific areas as designated by the Department is proposed for this reserve in Section 630(d)(23).
- Flood Flow Conveyance: To facilitate flood flow conveyance and the transportation of additional flows through the LIER in a manner that benefits wildlife by managing on-site conveyance features through nonstructural improvements such as vegetation management.

The property is currently undesignated land owned by the Department, located near an urban area. It is used by the general public in an uncontrolled manner (e.g. illegal dumping, destruction of signs, unregulated hunting, overnight camping, unauthorized structures built on property). The property's designation as an ecological reserve in Section 630(b), Title 14 will bring it under the protection of the general regulations for Department lands (proposed Section 550), and other pertinent regulations in Section 630. This will help to alleviate damaging activities and better protect federal and state listed species and their habitats.

4) Designate the San Antonio Valley Ecological Reserve, Santa Clara County.

The primary management objective of the 2,899 acre proposed San Antonio Valley Ecological Reserve is protection of native habitat types, wildlife and plant species that are present on the property. The site has historically been used for hunting, and limited hunting as part of special opportunities at such times and in specific areas as designated by the Department is proposed in Section 630(d)(36).

The native habitat types on proposed reserve include Valley Oak Woodland, Blue Oak-Foothill Pine Woodland, Mixed Chaparral, and Vernal Pool. The property contains a high abundance and diversity of native flowering plants including five sensitive species. Hospital Canyon larkspur (*Delphinium californicum* subsp. *interius*) and chaparral hairbell *(Campanula exigua*) have not

been proposed for state or federal listing as threatened or endangered, but are considered very rare and vulnerable by the California Native Plant Society (CNPS List 1B.2). Santa Clara thorn-mint *(Acanthomintha lanceolata*), spring lessingia (*Lessingia tenuis*), Michael's rein orchid (*Piperia michaelii*) are California Native Plant Society List 4 plants, which are of limited distribution or infrequent throughout a broader area in California. Special status wildlife species possibly occurring on-site include California tiger salamander (*Ambystoma tigrinum californiensis*, red-legged frog (*Rana aurora*) and foothill yellow legged frogs (*Rana boylii*). Tule elk (*Cervus elaphus*), which were re-introduced into their historical habitat in the 1970s, have been observed on the property.

Cattle grazing and other unauthorized uses have occurred on the property. The property is adjacent to Henry Coe State Park and private ranches. The property's designation as an ecological reserve in Section 630(b), Title 14 will bring it under the protection of the general regulations for Department lands (proposed Section 550), and other pertinent regulations in Section 630. This will provide the level of protection appropriate for the sensitive habitats and species known or anticipated to be on-site.

5) Designate the Sands Meadow Ecological Reserve, Tuolumne County.

The primary management objective for the proposed 120 acre Sands Meadow Ecological Reserve (SMER) is the protection of montane meadow, stream and forest habitats in the central Sierra Nevada. Management objectives would be to survey and manage for special status species including great gray owl (*Strix nebulosa)* and willow flycatcher *(Empidonax traillii),* both of which are State-listed as Endangered, known from this general area and utilize the type of habitats available on-site. Other focus species include a suite of mesocarnivores (animals that are mostly carnivorous) including Sierra Nevada red fox (*Vulpes vulpes necator*, State-listed as Threatened), wolverine *(Gulo gulo*, State-listed as Threatened), fisher *(Martes pennanti)* and marten *(Martes americana*). Management of this property as an ecological reserve would also facilitate protection of an adjacent 40 acre property with a conservation easement held by the Department. The 40 acre parcel is bordered on three sides by the SMER. The two properties combined are surrounded by the Stanislaus National Forest and are wholly contained within a designated State Game Refuge. The designation of the Department's parcel as an ecological reserve in Section 630(b), Title 14 will bring it under the protection of the general regulations for Department lands (proposed Section 550), and other pertinent regulations in Section 630. This designation will provide the level of protection appropriate for the sensitive habitats on-site and the listed species they support.

6) Designate the Vernalis Ecological Reserve, San Joaquin County.

The proposed Vernalis Ecological Reserve (VER) is approximately 136 acres of seasonal emergent wetland and riparian habitat, located along the San Joaquin River, south of Manteca in San Joaquin County. It consists of two separate units, Vernalis and Dredger Island, located on opposite sides of the mouth of a deep oxbow. The Vernalis unit is 115 acres in size and consists primarily of seasonal emergent wetland vegetation, along with a few small scattered cottonwoods. The Dredger Island unit is 21 acres in size and is a remnant stand of riparian habitat dominated by large cottonwoods and valley oaks (*Quercus lobata)*, with some willows, elderberry (*Sambucus mexicana)*, and other native shrubs in the understory. Both parcels are within the floodplain of the San Joaquin River. Because the habitat value to native species on this property is high and the potential for recreational use is relatively low due to its small size and lack of land-based public access, the Department proposes that this property should be designated as an ecological reserve.

The primary management objective for the proposed VER is to conserve the property's seasonal wetland and riparian habitat and provide limited public recreational opportunities in the form of fishing and hunting. Other than permitted access across private farms that borders both properties, the only access is by boat from the San Joaquin River, or by walking one to two miles along a levee from a public road. Most anglers access the properties by boat.

Recreational use of the properties is low, but illegal activities such as off-highway vehicle (OHV) use, trash dumping, target shooting, and campfires are fairly common. Department law enforcement personnel regularly patrol the property and eject individuals engaged in these activities. Designation of the property as an ecological reserve under proposed Section 630(b), Title 14 will provide the level of protection appropriate for the site and allow for more effective law enforcement.

The Vernalis unit was acquired in 1990 by the Department in fee title at no cost from the Federal Farmers Home Loan Administration, under the Federal Agricultural Credit Act of 1987 that donated surplus farm land with significant wildlife values to state wildlife agencies. The transaction also included a conservation easement retained by the U.S. Fish and Wildlife Service (USFWS) that requires that the property be perpetually managed for the maintenance of wildlife habitat, the conservation of soil and water, and maintenance of the natural plant species and ecology of the area. The conservation easement also allows for public use and recreation consistent with the dominant uses for fish and wildlife, and the conservation of the natural environment of the area. Fishing and hunting are compatible uses of this property, but the only feasible hunting opportunities occur during the pheasant season when birds fly to the property, over the levee from adjacent alfalfa fields. The Stockton Sportsmen's Club leases the alfalfa fields every fall to conduct public pay-for-access hunts with pen-raised pheasants. Upland game hunting at such times and in specific areas as designated by the Department is proposed for this unit in Section 630(d)(41).

The Vernalis unit may benefit from some habitat improvement activities, but a plan describing the existing vegetation and proposed actions to benefit and/or increase native vegetation would need to be developed by the Department, and likely approved by the USFWS. Currently, no management plan exists for the Vernalis unit, but it is anticipated to be completed (along with updating the current plan for the Dredger Island unit) by the end of 2011.

The Dredger Island unit is owned by the Central Valley Flood Protection Board (Board) (formerly known as the State Reclamation Board) and managed by the Department under a 50-year lease acquired in 1977. The lease expires on April 1, 2027, but staff at the Board stated that it is common for these leases to be renewed for another 50-year term. The lease was obtained by the Department to preserve the property's wildlife habitat value and provide public recreational use. The Department has on file a signed photocopy of the lease, including a legal description of the boundaries as required under Title 14 for ecological reserve designations (confirmed by Department HQ Lands Staff.)

The Board reserves the right to use Dredger Island "for the purpose of maintaining, constructing and operating flood control works," and "may suspend…this agreement for any period or periods of time for levee reclamation or flood control purposes…" However, to date, the riparian habitat on the property appears to be quite healthy and intact, therefore, it appears that few, if any, impacts from flood control maintenance have actually occurred. The Board will need to approve the designation of the property as an Ecological Reserve by amending the lease, and that action will be completed prior to the scheduled adoption date for these proposed regulations. The

Department's wildlife management biologist for San Joaquin County (North Central Region) is currently working with the Board's Staff Environmental Scientist to amend the lease. This process includes updating the current Department management plan for Dredger Island, written in 1990.

The primary management objective for the Dredger Island unit is to conserve the property's riparian wildlife habitat and to provide public recreational opportunity in the form of fishing. At only 21 acres, the parcel is too small to sustain an upland game (primarily quail, dove, or rabbits) hunting program. The property is also approximately one mile north of a San Joaquin County school, so safety issues further preclude use of the property for hunting.

Dredger Island is remnant San Joaquin River riparian habitat that occurs within an area known to be used by nesting Swainson's hawks (*Buteo swainsoni)*. Valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*) may also exist on the property, along with small populations of birds and small mammals that are typical of Central Valley riparian habitat. Neighboring properties along the east side of the parcel are large farms that grow alfalfa and row crops.

The designation of these lands as units of the Vernalis Ecological Reserve in the proposed Section 630(b), Title 14 will provide protection for the property through the general regulations proposed under Section 550 and other pertinent regulations in Section 630. Protection under Title 14 will help to prevent damaging activities and better protect the habitats, while still allowing continued use by the public for fishing and hunting on the respective units.

<u>Site Specific Regulations for Palo Verde Ecological Reserve and the Magnesia Springs Ecological Reserve, Riverside County</u>

Palo Verde Ecological Reserve

Hunting rabbit, doves and quail and waterfowl in accordance with general hunting regulations is currently allowed at the Palo Verde Ecological Reserve (current Section 630(b)(87)(B)). The Reserve is adjacent to a Riverside County park that allows overnight and long-term camping. Many people who stay at the park regularly visit the ecological reserve. The Department proposes to limit methods of take for hunting on the reserve for the safety of adjacent park users. The proposed regulations (Section 630(d)(28), state that hunting with a firearm on the ecological reserve will be limited to hunting rabbits, doves, quail and waterfowl with a shotgun. Archery deer hunting is also proposed as an allowable use.

Magnesia Springs Ecological Reserve

Trails that cross the Magnesia Springs Ecological Reserve were rerouted and renamed as part of implementation of Section 7.3.3.2 of the Coachella Valley Multiple Species Habitat Conservation Plan and Natural Communities Conservation Plan. This section addresses public use and trails management on reserve lands within the Santa Rosa and San Jacinto Mountains Conservation Area, which includes Magnesia Springs Ecological Reserve. These changes necessitate updating the names of trails currently referred to by name in Section 630(b)(73). The new names appear in the corresponding sections in the proposed regulations: Sections 630(g)(7) and 630(h)(16).

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, on all options relevant to this action at a hearing to be held at the Veteran's Memorial Building, 112 West Cabrillo Boulevard, Santa Barbara, California, on Thursday, November 17, 2011 at 8:30 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, on all actions relevant to this action at a hearing to be held at the State of California, Resources Agency Building Auditorium, 1416 Ninth Street, Sacramento, California, on Thursday, February 2, 2012 at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before January 26, 2012, at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@fgc.ca.gov. **Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on January 31, 2012. All comments must be received no later than February 2, 2012, at the hearing in Sacramento, CA.** If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Sonke Mastrup, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Sheri Tiemann at the preceding address or phone number. **Dr. Eric Loft, Chief, Wildlife Branch, phone (916) 445-3555, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at http://www.fgc.ca.gov.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action

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 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 will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed regulations are intended to clarify existing regulations.

(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:

None.

(c) Cost Impacts on a Representative Private Person or Business:

Per proposed regulation Section 550.5(d), persons or organizations that apply for a special use permit would pay a nonrefundable application fee of $58.71. If the applicant is notified that the Department intends to approve the permit, the applicant would pay a permit fee prior to the permit being issued. The proposed permit fee is $51.00 for a Type 1 Special Use Permit or $386.50 for a Type 2 Special Use Permit. The permit fee recovers the Department's cost to review and issue the permit. An additional amount of money may be charged or a deposit may be required to recover other Department costs associated with a special use (e.g. site preparation, monitoring during the special use, clean up) Definitions of Type 1 and 2 special uses are in proposed Section 550.5(d)(1).

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

The reduction of duplication within the lands regulations would reduce the number of pages in the regulation booklets which are published each year ("Hunting and Other Public Uses on State and Federal Areas"). This would save the state money in publishing costs. The state would recover the cost of regulating special uses or events on Department lands through the special use permit fee.

(e) 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, Government Code: None.

(h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business.

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

Jon K. Fischer
Deputy Executive Director

Dated: October 4, 2011