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**Re: Phasing of NonLead Requirement (AB 711)
Comments on Draft Environmental Document**

2015 FEB 25 PM 2:14
CALIFORNIA
FISH AND GAME
COMMISSION

Dear Mr. Stowers:

We write on behalf of our clients the National Rifle Association (NRA), the California Rifle & Pistol Association (CRPA), and the hundreds of thousands of individual members of those associations in California, as well as hundreds of individual firearm manufacturers, dealers, and owners. By this letter we are officially commenting on the recently released California Department of Fish and Wildlife (CDFW) Draft Environmental Document (DED), prepared pursuant to the California Environmental Quality Act (CEQA) on behalf of the California Department of Fish and Game Commission (Commission).

Our clients and their membership who hunt in California and who are affected by these regulatory provisions, have significant concerns regarding the CDFW's Proposed Program to implement regulations under AB 711 involving the phasing of alternative ammunition for all hunting in California. Specifically, the CDFW's analyses and assessment of the Biological Resources Section, including BIO-2, and the Recreational Section, including REC-1, are woefully deficient, and lack factual and evidentiary support. The potential environmental effects identified in the BIO-2 and REC-1, Sections will have a significant impact on the environment.

I. Introduction

In October of 2013, Governor Brown signed AB 711 into law. For multiple reasons, NRA and CRPA did not and do not support AB 711, and believe that it should be repealed. Nonetheless, as it exists AB 711 requires the CDFW and Commission to implement the statutory mandate by no later than July 1, 2019, requiring the use of nonlead projectiles and ammunition for the taking of wildlife statewide, consistent with Fish & Game Code section 3004.5. The CDFW and Commission's Proposed Program involves the implementation of regulations, including the addition of section 250.1, the repeal of section 355, and the amendment to sections 311, 353, 464, 475 and 485 of Title 14 of the California Code of Regulations.

The potential environmental impacts identified and analyzed in the DED are the result of CDFW's initial evaluation taken from its Initial Study (IS) of October 28, 2014. The IS is an environmental checklist identifying numerous areas of concern and potential environmental impacts. This requires the CDFW to perform a cursory review and analysis to determine whether further evaluation is required in a DED, CDFW's functional equivalent to an Environmental Impact Report under CEQA. In the IS, CDFW identified: 1) Biological Resources; 2) Hazards & Hazardous Materials; and 3) Recreation as areas requiring further evaluation because of the possibility for some potential impact on the environment.

The California Legislature has acknowledged: "the party subject to regulation is often in the best position, and has the greatest incentive, to inform the agency about possible unintended consequences of a proposed regulation." (*Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal. 4th 557, 568-69, citing *Armistead v. State Personnel Bd.* (1978) 22 Cal. 3d 198, 204-05 and *Ligon v. State Personnel Bd.* (1981) 123 Cal. App. 3d 583, 588.). The NRA and CRPA, on behalf of their numerous members, have just such an incentive to inform the CDFW and Commission of the consequences that will result under the current plan for implementing AB 711, concerning potential environmental effects identified in the DED. Accordingly, the NRA and CRPA respectfully submit their comments to the DED.

A. NonLead Projectiles for Many Cartridges are Unavailable or Are Cost Prohibitive

The primary flaw in CDFW's analyses and assessment in the DED BIO-2 and REC-1 Sections is the failure to consider the unavailability and prohibitive cost of alternative ammunition, consisting of metals other than lead. Indeed, the CDFW should propose mitigation measures that delay implementation of the regulations for as long as necessary, to allow nonlead projectiles used in ceratin cartridges that are popular with hunters to become available.

The National Shooting Sports Foundation (NSSF) is the trade association for firearms, ammunition, hunting and recreational shooting sports industry in the United States. Throughout the AB 711 implementation process, NSSF has consistently provided the CDFW and the Commission with factual information from the firearms and ammunition industry, demonstrating the unavailability and prohibitive cost of nonlead projectiles used in ceratin cartridges that are popular hunting ammunition.

NSSF commissioned a comprehensive study by Southwick and Associates that analyzed the lack of supply for alternative ammunition used for hunting in California. (NSSF, 2014) CDFW and the Commission, however, give no deference to industry analysis and disregard the findings in the Southwick and Associates study. Incredibly, certain Commissioners have even gone on the record at the February 12, 2015 Commission meeting stating that it is an elaborate conspiracy by the ammunition industry to limit the alternative ammunition supply in California in order to subvert AB 711.

Nonetheless, NSSF has provided the following information showing that projectiles for certain cartridges made with alternative metals are either commercially unavailable or cost prohibitive, and demonstrating how AB 711 will cause many problems for California hunters and the state:

- The Nonlead Projectile and Ammunition Certification Process will severely limit alternative ammunition already in the market that is not currently certified by the CDFW.
- Currently, only 0.5% of rimfire ammunition is produced using alternative metals with manufactures reporting an inability to increase production.
- Unavailability and higher costs associated with alternative ammunition will cause 36% of hunters in California to either stop hunting or reduce participation.
- Unavailability and higher costs associated with alternative ammunition will result in a 13% reduction of hunters in California.
- The reduction in the number of hunters will be approximately 51,676.
- The economic impact from the loss of hunters, due to either the unavailability or high cost of alternative ammunition will result in the loss of 1,868 jobs, \$68.7 million in salaries and wages, \$13.9 million in state and local tax revenues and \$5.8 million of federal tax revenues.

Despite an abundance of information provided by the firearms and ammunition industry regarding the unavailability and burdensome costs associated with alternative ammunition, CDFW downplays the industry's information finding that the loss of hunters will be roughly 5%, while also concluding the environmental effect is less than significant in the BIO-2 and REC-1 Sections. But the environmental impact of prohibiting the use of such ammunition clearly will be significant, and should be carefully considered.

B. Many Nonlead Ammunition Types May Be Prohibited as Armor Piercing

In addition to concerns regarding the unavailability and high cost of alternative ammunition expressed by the firearms and ammunition industry, on February 13, 2015, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) released its proposed framework (BATFE, 2015) for determining whether a particular projectile may be exempted from the definition of "armor piercing." Preliminary

commentary regarding the potential impact of the proposed ATF framework on the availability of certain alternative ammunition indicates that it may have an impact on the implementation of AB 711 regulations.

The DED does not address ATF's most recently proposed changes to the federal regulations regarding the designation of armor piercing ammunition. CDFW should properly evaluate ATF's proposed changes and the potential impact these changes may have on the availability and cost of alternative ammunition for hunting in California. Considering Commissioner Richard Rogers' serious concerns expressed at the February 12, 2015, Commission meeting about ATF's future decisions on armor piercing ammunition, the CDFW must evaluate how ATF's regulation of armor piercing ammunition will affect the implementation of AB 711.

II. Section Bio-2: Impacts to Ecosystems When Reduced Hunting Activity Inevitably Contributes to Overpopulation

Hunters, ranchers, farmers and landowners, and not CDFW or federal agencies (e.g., Dept. of Agriculture) are primarily responsible for population control methods used on small game, non-game, and pests. State and federal agencies' depredation efforts concerning these types of wildlife populations are limited.

The NRA, CRPA, NSSF, other stakeholder groups, and individuals have consistently warned the CDFW and the Commission about the unavailability of rimfire ammunition in .22 caliber and below. As the CDFW and Commission are fully aware, these calibers are predominantly used for the taking small game, non-game, and pests. NSSF has produced evidence showing that only 0.5% of rimfire ammunition is produced in nonlead metals (Fed. Reg., Vol. 75, No. 231, Dec. 2, 2010 citing Mississippi Flyway Council).

With this ammunition unavailable (USFWS, 2010), the populations of small game, non-game, and pests will naturally increase because, as pointed out by NSSF and Southwick and Associates, the unavailability and increased cost of alternative ammunition will significantly lower the number of hunters in California, and conversely the amount of wildlife taken/depredated by hunters and others. Yet the CDFW fails to properly analyze and assess the potential impact on the environment from the inevitable overpopulation of certain wildlife that will be caused by the reduction in hunting and depredation.

As small game, non-game, and pests are generally burrowing animals (e.g., rabbits, rodents, and squirrels), the potential impact to the ecosystem is potentially significant. For example, in the Sacramento Delta area, there is a significant threat to the various levies that exist to channel and retain delta waters from valuable farmland and ranches. Any inability to depredate and control the burrowing wildlife that threatens the numerous levies may result in a significant threat to the delta area. (Santa Clara Water District, 2015; JPL, 2014; Blach, 2006) Considering that the unavailability of rimfire ammunition will seriously affect depredation of this type of wildlife, the increased population of these animals will have a significant impact to the ecosystem.

The DED lacks any analysis or evidence supporting CDFW's conclusion that there is a less than significant impact on the ecosystem as a result of the increase in small game, non-game, and pest populations, due to a decrease in hunting and depredation activity. There is no support for the CDFW's finding of a "less than significant" impact in this section. Therefore, it is unreasonable for the CDFW to give no weight to an abundance of evidence from the firearm and ammunition industry showing that the unavailability of rimfire ammunition will have a significant impact on the ecosystem.

Our clients request that the CDFW and Commission mitigate this significant impact by delaying implementation of AB 711 until the availability and cost of alternative ammunition is sufficiently addressed.

III. Section Rec-1: Impacts to Hunting Activities Due to the Increased Cost or Unavailability of Nonlead Ammunition Will Result in Physical Changes to the Environment Including Changes in Land Uses or Reduced Maintenance of Habitat Areas

The CDFW's analyses and assessment of the potential impact on the environment from a direct or indirect physical change to the environment is inadequate. Again, NSSF and Southwick and Associates have provided considerable evidence showing that the unavailability and high cost of alternative ammunition will have a significant impact on the number of hunters, and conversely the environment.

As mentioned above, hunters, ranchers, farmers and landowners, and not CDFW or federal agencies (e.g. Dept. of Agriculture) are primarily responsible for population control on small game, non-game, and pests. In other words, state and federal agencies depredation of wildlife in these areas is limited and, thus, the alternative ammunition requirement will severely limit the depredation and take of these animals, which will have a negative impact on the environment.

The Southwick and Associates study indicates a 13% reduction in the number of hunters in California as a direct result of implementation of the AB 711 regulation. This will result in a total economic fiscal impact of \$76,390,790. CDFW, however, claims that the reduction in hunters will be 5%, and will result in a total economic and fiscal impact of \$29,381,073.00. CDFW argues that past experience from the lead ammunition ban in the Condor Range (AB 821) and the federal waterfowl lead ban suggests that CDFW's analysis is more accurate. CDFW's assumptions fail to acknowledge that the type of hunting in the Condor Range and for waterfowl, is distinguishable from the various types of hunting statewide that are impacted by AB 711.

The California Department of Finance stated in its December 31, 2014 letter to the Commission that the availability of nonlead ammunition is a key assumption that may necessitate a re-examination of the phasing to alternative ammunition. The NRA, CRPA, and NSSF have consistently warned the CDFW and the Commission about the unavailability of rimfire ammunition in .22 caliber and below. As the CDFW and Commission are aware, these cartridges are predominantly used for the take and depredation of small game, non-game, and pests.

Due to the fact that only 0.5% of rimfire ammunition is produced in alternative ammunition, wildlife including small game, non-game, and pests will naturally increase in population because of the

decrease in depredation and takes. Yet the DED lacks any credible analysis or evidence supporting CDFW's conclusion that there is a "less than significant" impact on the environment as a result of the increase in small game, non-game, and pest populations due to a decrease in hunting and depredation activity.

CDFW's conclusion that a 5% reduction in hunters will result from the implementation of the AB 711 regulations significantly downplays the threat from an increase in small game, non-game, and pest populations. CDFW's evaluation of the potential environmental impact fails to seriously consider the almost complete unavailability of rimfire ammunition in nonlead metals.

As part of CDFW's failure to consider this impact, CDFW neglects to take into consideration human health risks due to the increase in the population of animals susceptible to various kinds of disease outbreak (*e.g.*, sylvatic plague, pneumonic plague and rabies) (Antolin, et al., 2002; CDC, 2012; NPS, internal unpublished report). Further, CDFW does not consider potential threats to wildlife because of a decrease in shooting depredation and the corresponding increase in poisoning of non-game and pests to control populations (USDA, 2014). For example, recent studies indicating a significant threat to raptors from the consumption of poisoned (*e.g.*, anticoagulant rodenticides) wildlife is well documented. Additionally, agricultural impacts need to be evaluated due to the increase in this type of wildlife population (USDA, 2009; Whisson et al., 1999).

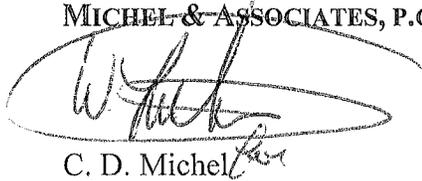
Again, as small game, non-game, and pests are generally burrowing animals (*e.g.*, rabbits, rodents, and squirrels) the potential impact on the environment is significant (U.C. Davis, 2015). For example, in the Sacramento Delta area, there is a significant threat to the various levies that exist to channel and retain waters from valuable farmland and ranches. Any hindrance for controlling the burrowing wildlife in the delta area may result in a significant threat to the numerous levies. Considering that the unavailability of rimfire ammunition in alternative metals will have a serious affect on depredation of these animals, this will naturally result in a significant impact to the environment.

CDFW's finding of a "less than significant" impact in the section at issue is not supported by the evidence. It is unreasonable for CDFW to give no weight to an abundance of evidence from the firearm and ammunition industry that clearly shows that there will be a significant impact. Consequently, the NRA and CRPA request the CDFW and the Commission mitigate this significant impact by delaying implementation of AB 711 until the unavailability and cost of alternative ammunition is sufficiently addressed.

IV. CONCLUSION

The NRA and CRPA urge the CDFW and the Commission to revise the Proposed Program's DED to address the deficiencies outlined in this comment letter, and to re-analyze the significant impacts to the environment identified herein. Our clients request that the CDFW and the Commission propose mitigation measures that delay implementation of the regulations for as long as certain calibers of alternative ammunition remain unavailable.

Sincerely,
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