

Sacramento, California 95814

VIII. Location of Department files:

Department of Fish and Game
1416 Ninth Street
Sacramento, California 95814

IX. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

No alternatives were identified.

(b) No Change Alternative:

If the Commission does not have the authority to temporarily supersede FGC section 5937 while the project is being implemented, it is possible that an approved project may not be conducted if legal challenges based on FGC section 5937 are brought. The regulatory proposal is intended to minimize the risk of delay from legal challenges with respect to FGC section 5937, which would involve complex biological, technical, and legal issues that may not be resolved quickly in a court of law.

(c) Consideration of Alternatives:

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

X. 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 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 regulatory 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. This regulation proposal only affects a 400-yard reach of Big Grizzly Creek from 5 to 45 days.

- (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:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulatory action.

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

None.

- (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:

None.

- (h) Effect on Housing Costs:

None.

Informative Digest/Policy Statement Overview

Fish and Game Code (FGC) Section 5937 requires that sufficient water be supplied through or around a dam to keep in good condition any fish that may be planted or exist below the dam. In addition, FGC subsection 219(a) allows the Fish and Game Commission (Commission) to adopt regulations that supersede any Code section for the protection of fish, wildlife, and other natural resources under the jurisdiction of the Commission.

The Department of Fish and Game (Department) has proposed to eradicate northern pike from Lake Davis (Plumas County) and all of its tributaries to re-establish the trout fishery at Lake Davis and to prevent the pike from escaping from the reservoir and causing adverse ecological impacts, such as those that have occurred at Lake Davis, in other parts of the State or region. A joint EIR/EIS was prepared by the Department and the U.S. Forest Service for the proposed Lake Davis Pike Eradication Project and made available for public comment. The 45-day public comment period ended October 16, 2006. Seven alternatives were proposed including: a no project/no action alternative; five alternatives using the chemical piscicide rotenone at various reservoir water levels; and a no chemical alternative that calls for complete dewatering of the reservoir and its tributaries.

The text in bold below replaces the text in the Informative Digest of the Initial Statement of Reasons (ISOR). This text was replaced to reflect the Department's final decision.

As of the date of the ISOR, a project involving the use of rotenone had not been approved. However, since then, on January 23, 2007, the Department certified the EIR/EIS, approved a project, and requested the Commission adopt a regulation to temporarily supersede FGC Section 5937 for the specific and limited purpose of implementing the project to eradicate pike, which would protect fish, wildlife, and other natural resources under the jurisdiction of the Commission. Because of the time it would take for the Commission to notice, consider, and potentially adopt such a regulation, the ISOR was prepared prior to the approval of a pike eradication project with the understanding that the application of any such regulation would be limited to an approved project. The Department's approved project requires that the outlet valve in Grizzly Valley Dam be closed for at least five days and potentially up to 45 days following application of rotenone to the reservoir waters, depending on which neutralization option is permitted. Closing the outlet valve would result in dewatering Big Grizzly Creek for at least a 400-yard reach downstream where accretion flows appear. This regulation temporarily supersedes FGC Section 5937 specifically for Grizzly Valley Dam to aid the eradication of pike from Lake Davis and its tributaries.

Whether or not Fish and Game Code Section 5937 applies to the unique circumstances of the pike eradication project is a question the resolution of

which would involve complex biological, technical and legal issues. This regulation is a cautionary approach that is intended to minimize the risk of delay from legal challenges that could delay implementation of an approved project for weeks to a point in time when seasonal conditions are not ideal, as was the case in 1997, or for another year until reservoir levels and seasonal conditions are optimal for an effective treatment (assuming pike have not escaped Lake Davis in the meantime, and the Department has the ability and opportunity to implement an eradication project in a future year). Given the ever-increasing pike population, the increasing incidence of anglers catching pike, recent known incidents of anglers moving live pike, and the potential for spilling of the dam in extremely wet years, the Department believes it is critical to minimize the risk of delay.

The Fish and Game Commission adopted findings in accordance with the California Environmental Quality Act and adopted the proposed changes to the regulations at its April 13, 2007 meeting.

ADDENDUM TO FINAL STATEMENT OF REASONS

NONSUBSTANTIVE CHANGES TO TEXT

1. "and Its Tributaries" was added to the title; "using rotenone" was added to the text, following the word project; and the title of Section 721 has been added to the text for clarity of display.
2. The duplicate listing of Fish and Game Code section 220 was removed from the reference citations

CLARIFICATION

In the Notice, Informative Digest and elsewhere in the file there are statements that the outlet valve at Grizzly Valley Dam may be closed from 5 to 45 days. However the text that was noticed to the public and adopted by the Fish and Game Commission has always stated "...may be closed for a period of up to 45 days..." and that is also what is in the CEQA document, Item 12, and the Notice of Determination, Item 16, of the rulemaking. The effect of this regulation is to allow for a period of up to 45 days not 5 to 45 days.

DOCUMENT RELIED UPON

The Initial Statement of Reasons identified "Lake Davis Pike Eradication Project Draft EIR/EIS , September 1, 2006" as a document relied upon. That document was available during the entire rulemaking period but was inadvertently omitted from the rulemaking file when the rulemaking file was transmitted to OAL.