

AMENDED IN ASSEMBLY MAY 22, 2000
AMENDED IN ASSEMBLY MAY 3, 2000
AMENDED IN ASSEMBLY MARCH 30, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 2356

Introduced by Assembly Member Keeley

February 24, 2000

An act to amend Sections 1601, 1602, 1603, 1603.1, 1603.3, 1603.5, and 1607 of, to add ~~Section~~ *Sections 1601.1 and 1608* to, and to repeal and add Section 1604 of, the Fish and Game Code, relating to streambeds.

LEGISLATIVE COUNSEL'S DIGEST

AB 2356, as amended, Keeley. Streambed alteration.

(1) Existing law prohibits any construction by, or on behalf of, a state or local government agency or a public utility that diverts, obstructs, or changes the natural flow of the bed, channel, or bank of a waterway designated by the Department of Fish and Game, and any project that would result in the disposal or deposit of debris, waste, or other material containing crumbled, flake, or ground pavement where it can pass into any river, stream, or lake designated by the department, without first notifying the department of that activity. Similar provisions make it unlawful for any person to substantially divert, obstruct, or change the natural flow or the bed, channel, or bank of a waterway designated by the department without first notifying the department of that

activity. Existing law requires the department to respond to the plan within 30 days and to propose modifications if an existing fish or wildlife resource may be substantially adversely affected by the activity. Existing law requires the agency, utility, or person to notify the department whether the proposals are acceptable.

~~This bill would allow the applicant to comment on, rather than approve, the proposals by the department. The bill would require the department to issue a notice of intent to issue or to substantively amend a permit or previously issued agreement, and to notify various interested parties. The bill would also require the department to issue or deny a permit within certain specified time periods.~~

~~(2) Existing~~

Existing law provides that any person who violates the above requirements is subject to a civil penalty not to exceed \$25,000 per violation.

This bill would make any state or local agency ~~or~~, public utility, *or person* that violates these requirements subject to that civil penalty *and to any applicable criminal penalties. By making local agencies subject to criminal penalties, this bill would impose a state-mandated local program.* This bill would also provide that ~~permit~~ violators may be required to restore fish and wildlife resources affected by the violation, and would require the violator to ~~obtain a permit from~~ *enter into an agreement with* the department for the restoration.

~~(3)~~

(2) Under existing law, the ~~director~~ *Director of Fish and Game* may establish fees for permits, limited to a maximum of \$2,400 with annual adjustments.

This bill would provide that the fees for master and complex ~~permits~~ *agreements*, as defined by the department, may exceed that maximum.

(3) *The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

This bill would provide that no reimbursement is required by this act for a specified reason.



Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1601 of the Fish and Game Code
2 is amended to read:

3 1601. (a) Except as provided in this section, a
4 notification including general plans sufficient to indicate
5 the nature of a project for construction by, or on behalf
6 of, any state or local governmental agency or any public
7 utility shall be submitted to the department if the project
8 will do any of the following:

9 (1) Divert, obstruct, or change the natural flow or the
10 bed, channel, or bank of any river, stream, or lake
11 designated by the department in which there is at any
12 time an existing fish or wildlife resource or from which
13 these resources derive benefit.

14 (2) Use material from the streambeds designated by
15 the department.

16 (3) Result in the disposal or deposition of debris, waste,
17 or other material containing crumbled, flaked, or ground
18 pavement where it can pass into any river, stream, or lake
19 designated by the department.

20 If an existing fish or wildlife resource may be
21 substantially adversely affected by that construction, the
22 department shall notify the governmental agency or
23 public utility of the existence of the fish or wildlife
24 resource together with a description thereof and shall
25 propose reasonable modifications in the proposed
26 construction that will allow for the protection and
27 continuance of the fish or wildlife resource, including
28 procedures to review the operation of those protective
29 measures. The department's description of an existing
30 fish or wildlife resource shall be specific and detailed and
31 the department shall make available upon request the
32 information upon which its conclusion is based that the
33 resource may be substantially adversely affected. The
34 proposals shall be submitted within 30 days from the date
35 of receipt of a complete notification, except that the time



1 period may be extended by the department for ~~30~~ 10
2 *working* days, or longer if extended by mutual
3 agreement. ~~The department shall determine whether a~~
4 ~~notification is complete pursuant to procedures set forth~~
5 ~~in Sections 65941 to 65943, inclusive, of the Government~~
6 ~~Code.~~ ~~Upon~~ Upon a determination by the department
7 and after notice to the affected parties of the necessity for
8 an onsite inspection or upon the request for an onsite
9 inspection by the affected parties, the department shall
10 make an onsite inspection of the proposed construction
11 and shall make the inspection before it proposes any
12 modifications.

13 (b) ~~(1)~~ Within 14 days from the date of receipt of the
14 department's proposals, the affected agency or public
15 utility shall notify the department in writing ~~of any~~
16 ~~comments on the proposals it may have~~ *whether the*
17 *proposals are acceptable*, except that the ~~time period~~
18 ~~shall be extended by written request of the affected~~
19 ~~agency or public utility for a specified period of time. If~~
20 ~~the affected agency or public utility does not have any~~
21 ~~comments, the agency or public utility shall so notify the~~
22 ~~department in writing. Upon request, the time period~~
23 ~~may be extended by mutual agreement. Upon request,~~
24 *the* department shall meet with the affected agency or
25 public utility within seven days of receipt of the
26 notification, or at a time mutually agreed upon, for the
27 purpose of developing proposals that are acceptable to
28 the department and the affected agency or public utility.
29 If the affected agency or public utility and the
30 department are unable to develop a mutually acceptable
31 proposal, a panel of arbitrators shall be established. The
32 panel of arbitrators shall be established within seven days
33 from the date of the meeting, or at a time mutually agreed
34 upon, and shall be composed of one representative of the
35 department, one representative of the affected agency or
36 public utility, and a third person mutually agreed upon
37 *who has scientific expertise and experience relevant to*
38 *the disputed proposals*, or, if no agreement can be
39 reached, the third person *meeting these qualifications*
40 shall be appointed in the manner provided by Section



1 1281.6 of the Code of Civil Procedure. The third person
2 shall act as chair of the panel. The panel may ~~settle~~
3 ~~disagreements~~ and make binding decisions regarding
4 modifications of the project necessary to protect the fish
5 or wildlife resource. *The panel's decision shall be based*
6 *on the best scientific information that is reasonably*
7 *available and, if it modifies the department's proposals,*
8 *shall include reasonable modifications that will allow for*
9 *the protection and maintenance of the fish and wildlife*
10 *resources.* The arbitration shall be completed within 14
11 days from the date that the composition of the panel is
12 established, unless that time is extended by mutual
13 agreement. The expenses of the department
14 representative shall be paid by the department, the
15 expenses of the representative of the governmental
16 agency or the public utility shall be paid by the
17 governmental agency or public utility, and the expenses
18 of the chair of the panel shall be paid one-half by each
19 party. ~~At the conclusion of this process, the notification~~
20 ~~shall be deemed a complete application for the proposed~~
21 ~~project for purposes of Article 5 (commencing with~~
22 ~~Section 65950) of Chapter 4.5 of Division 1 of Title 7 of the~~
23 ~~Government Code and the California Environmental~~
24 ~~Quality Act (Division 13 (commencing with Section~~
25 ~~21000) of the Public Resources Code).~~

26 (2) (A) ~~The department shall issue a notice of intent~~
27 ~~to issue a permit, or to substantially amend a permit or~~
28 ~~previously issued agreement by doing the following:~~

29 (i) ~~Mailing the notice to all organizations and~~
30 ~~individuals that have submitted a written request for such~~
31 ~~notice about the specific proposed project and to all~~
32 ~~public agencies that have jurisdiction by law with respect~~
33 ~~to the proposed project; and any one of the following:~~

34 (ii) ~~Mailing the notice to the owners and occupants of~~
35 ~~property contiguous to the location of the proposed~~
36 ~~project as identified by the applicant in the applicant's~~
37 ~~notification. Owners of such property shall be identified~~
38 ~~as shown on the latest equalized assessment roll as~~
39 ~~provided to the department by the applicant.~~



1 ~~(iii) Posting the notice at the department office for the~~
2 ~~region in which the proposed project is located.~~
3 ~~(iv) Mailing the notice to the office of the clerk of each~~
4 ~~county in which the proposed project is located. The~~
5 ~~county clerk shall post the notice in the office of the~~
6 ~~county clerk within 24 hours of receipt for a period of at~~
7 ~~least 20 days.~~
8 ~~The methods of providing notice described in this~~
9 ~~subparagraph do not preclude the department from~~
10 ~~providing additional notice by other means if the~~
11 ~~department so desires.~~
12 ~~(B) The notice described in subparagraph (A) shall~~
13 ~~include all of the following:~~
14 ~~(i) A brief description of the proposed project,~~
15 ~~including its commonly used name, if any.~~
16 ~~(ii) The location of the proposed project, preferably~~
17 ~~shown on a map, and the name of the applicant.~~
18 ~~(iii) A brief description of the fish and wildlife~~
19 ~~resources that may be substantially adversely affected by~~
20 ~~the proposed project.~~
21 ~~(iv) The department's proposed conditions.~~
22 ~~(v) The basis and rationale for the department's~~
23 ~~proposed conditions.~~
24 ~~(vi) The date by which written comments are~~
25 ~~required to be submitted to the department, which shall~~
26 ~~be at least 20 days from the date of issuance of the notice.~~
27 ~~(vii) The name and address of the person in the~~
28 ~~department to whom written comments are to be~~
29 ~~directed.~~
30 ~~(3) Prior to issuing or denying a permit pursuant to~~
31 ~~this section, the department shall consider and respond~~
32 ~~to all relevant and significant written comments received~~
33 ~~within the comment period from the applicant, the~~
34 ~~public, and public agencies with jurisdiction by law over~~
35 ~~the proposed project. Paragraph (2) and this paragraph~~
36 ~~shall apply only if the department is the lead agency, the~~
37 ~~project is not exempt from the California Environmental~~
38 ~~Quality Act (Division 13 (commencing with Section~~
39 ~~21000) of the Public Resources Code), and the Secretary~~
40 ~~of the Resources Agency certifies the regulatory program~~



1 authorized by this chapter, pursuant to the California
2 Environmental Quality Act (Division 13 (commencing
3 with Section 21000) of the Public Resources Code).

4 (4) The department shall issue or deny a permit within
5 the time periods specified by Article 5 (commencing with
6 Section 65950) of Chapter 4.5 of Division 1 of Title 7 of the
7 Government Code and the California Environmental
8 Quality Act (Division 13 (commencing with Section
9 21000) of the Public Resources Code). The department
10 shall not issue a permit if there are feasible alternatives or
11 feasible mitigation measures available that would avoid
12 or substantially lessen any significant adverse effect that
13 the project may have on the environment. *party. Any*
14 *party affected by a decision made by an arbitration panel*
15 *pursuant to this section may petition a court of competent*
16 *jurisdiction for confirmation, correction, or vacation of*
17 *the decision in accordance with Chapter 4 (commencing*
18 *with Section 1285) of Title 9 of Part 3 of the Code of Civil*
19 *Procedure. If the department enters into an agreement*
20 *that includes modifications made by the panel of*
21 *arbitrators, the department shall not be required to make*
22 *any findings required pursuant to Division 13*
23 *(commencing with Section 21000) of the Public*
24 *Resources Code if it determines that it cannot do so as a*
25 *result of the decision of the arbitration panel.*

26 (c) A governmental agency or public utility proposing
27 a project subject to this section shall not commence
28 operations on that project until the department has found
29 that the project will not substantially adversely affect an
30 existing fish or wildlife resource or until the department's
31 ~~permit conditions proposals, or the decision of a panel of~~
32 ~~arbitrators, have been incorporated into the project.~~ The
33 department shall not condition the ~~permit agreement~~ on
34 a project subject to this section on the receipt of another
35 state or federal permit.

36 (d) ~~A state or local governmental agency or public~~
37 ~~utility shall not engage in an activity affected by this~~
38 ~~section, unless the activity is conducted in accordance~~
39 ~~with the permit conditions.~~

40 (e) —



1 (d) The department shall determine and specify types
2 of work, methods of performance, or remedial measures
3 that are exempt from this section.

4 ~~(f)~~

5 (e) With regard to any project that involves the
6 routine maintenance and operation of water supply,
7 drainage, flood control, or waste treatment and disposal
8 facilities, notice to, and ~~a permit~~ *an agreement* from, the
9 department is not required subsequent to the initial
10 notification and agreement, unless the work as described
11 in the agreement is substantially changed or conditions
12 affecting fish and wildlife resources substantially change,
13 and the resources are adversely affected by the activity
14 conducted under the agreement. This subdivision applies
15 in any instance where notice to, and agreement with, the
16 department was attained prior to January 1, 1977:

17 ~~(g)~~, *and to agreements for levee maintenance within*
18 *the Sacramento/San Joaquin Delta executed prior to*
19 *January 1, 1997.*

20 (f) (1) Except as provided in paragraph (2), this
21 section does not apply to any of the following projects:

22 (A) Immediate emergency work necessary to protect
23 life or property.

24 (B) Immediate emergency repairs to public service
25 facilities necessary to maintain service as a result of a
26 disaster in a disaster-stricken area in which a state of
27 emergency has been proclaimed by the Governor
28 pursuant to Chapter 7 (commencing with Section 8550)
29 of Division 1 of Title 2 of the Government Code.

30 (C) Emergency projects undertaken, carried out, or
31 approved by a public agency to maintain, repair, or
32 restore an existing highway, as defined in Section 360 of
33 the Vehicle Code, except for a highway designated as an
34 official state scenic highway pursuant to Section 262 of the
35 Streets and Highways Code, within the existing
36 right-of-way of the highway, damaged as a result of fire,
37 flood, storm, earthquake, land subsidence, gradual earth
38 movement, or landslide, within one year of the damage.
39 Work needed in the vicinity above and below a highway
40 may be conducted outside of the existing right-of-way if



1 it is needed to stop ongoing or recurring mudslides,
2 landslides, or erosion that pose an immediate threat to the
3 highway or to restore those roadways damaged by
4 mudslides, landslides, or erosion to their predamage
5 condition and functionality. This subparagraph does not
6 exempt from this section any project undertaken, carried
7 out, or approved by a public agency to expand or widen
8 a highway damaged by fire, flood, storm, earthquake,
9 land subsidence, gradual earth movement, or landslide.

10 (2) The agency or public utility performing the
11 project shall notify the department in writing within 14
12 days from the date of commencement of a project
13 exempted by this subdivision and shall consult with the
14 department and ~~obtain a permit from~~ *enters into an*
15 *agreement with the department to restore whereby the*
16 *agency or department agrees to restore, to the maximum*
17 *extent feasible, the fish and wildlife resources that were*
18 *or may be substantially adversely affected by the*
19 *emergency project. The issuance of a permit pursuant to*
20 *this project. For the purposes of this subdivision,*
21 *“feasible” has the meaning set forth in Section 15364 of*
22 *Title 14 of the California Code of Regulations. If the site*
23 *can feasibly be restored, offsite mitigation shall not be*
24 *required for this postemergency work. An agreement*
25 *entered into pursuant to this subdivision is exempt from*
26 *the California Environmental Quality Act (Division 13*
27 *commencing with Section 21000) of the Public*
28 *Resources Code) and subdivisions (a) and (b) of this*
29 *section.*

30 (3) For purposes of this subdivision, “emergency”
31 means an emergency, as defined in Section 21060.3 of the
32 Public Resources Code.

33 ~~(h) The department may issue permits to applicants~~

34 (g) *Except as otherwise provided in this subdivision,*
35 *the department may enter into agreements with*
36 *applicants for a term of not more than five years for the*
37 *performance of activities subject to this section. Each*
38 ~~permit or previously issued~~ *agreement shall be extended*
39 *automatically for one year by the department at the*
40 *expiration of its term when requested by the permittee*



1 ~~or agreementholder~~ *agreementholder* in writing prior to
2 the expiration of the ~~permit~~ or agreement, and upon
3 payment of the appropriate fee, unless the department
4 determines that there has been a substantial change in
5 conditions or discovery of new information. ~~An extended~~
6 ~~agreement shall be deemed a permit~~ *After an agreement*
7 *expires, the department may extend the operation of the*
8 *agreement for the period deemed necessary to complete*
9 *the work specified in the agreement, but in no event may*
10 *the extension be for longer than one year from the*
11 *original expiration date of the agreement.* If there is a
12 disagreement between the department and the applicant
13 as to whether there has been a substantial change in
14 conditions, *or new information discovered,* the
15 department and the applicant shall proceed to arbitration
16 ~~pursuant to subdivision (b).~~ ~~The department may charge~~
17 ~~a fee when the permit is issued and for each renewal,~~
18 ~~extension, or amendment.~~

19 ~~SEC. 2.~~ *pursuant to subdivision (b).* *In addition to*
20 *charging a fee when an agreement is entered into, the*
21 *department may charge a fee for each extension or*
22 *amendment. If the activities subject to the agreement are*
23 *also covered by a permit issued pursuant to Chapter 1.5*
24 *(commencing with Section 2050) of Division 3, or a*
25 *natural community conservation plan approved pursuant*
26 *to Chapter 10 (commencing with Section 2800) of*
27 *Division 3, or by any other state or federal regulatory*
28 *program that comprehensively addresses the resources*
29 *protected by this section and the department*
30 *determines, in writing, that the measures contained in*
31 *those provisions are adequate to protect the fish and*
32 *wildlife resources affected by the activities, the*
33 *department may enter into an agreement pursuant to*
34 *this section for a period of longer than five years not to*
35 *exceed the term of the other permit, plan, or program.*
36 *The agreement shall be subject to any provisions in the*
37 *permit, plan, or program governing the extension or*
38 *amendments of the permit, plan, or program.*

39 *SEC. 2. Section 1601.1 is added to the Fish and Game*
40 *Code, to read:*



1 1601.1. Every state or local governmental agency or
2 public utility that violates Section 1601 or 1604 is subject
3 to Section 1603.1.

4 SEC. 3. Section 1602 of the Fish and Game Code is
5 amended to read:

6 1602. In addition to the provisions of Section 1601, the
7 department, following submission of the modifications
8 referred to in Section 1601, shall by mutual agreement
9 with any state agency proposing the project, establish the
10 procedures that the parties deem necessary to provide
11 adequate review of the proposed modifications and
12 consideration of alternative conditions designed to
13 protect existing fish and wildlife resources-

14 ~~SEC. 3.—. If no agreement can be reached between the~~
15 ~~department and the state agency proposing the project,~~
16 ~~the procedures for arbitration specified in Section 1601~~
17 ~~shall apply.~~

18 SEC. 4. Section 1603 of the Fish and Game Code is
19 amended to read:

20 1603. (a) It is unlawful for any person to substantially
21 divert or obstruct the natural flow or substantially change
22 the bed, channel, or bank of any river, stream, or lake
23 designated by the department, or use any material from
24 the streambeds, without first notifying the department of
25 that activity in writing, except when the department has
26 been notified pursuant to Section 1601. The department
27 shall, within 30 days from the date of receipt of a complete
28 notification, except that the time period may be extended
29 by the department for ~~30~~ 10 working days, or longer if
30 extended by mutual agreement, ~~determine whether a~~
31 ~~notification is complete pursuant to procedures set forth~~
32 ~~in Sections 65941 through 65943 of the Government Code.~~
33 ~~The.~~ The department shall, when an existing fish or
34 wildlife resource may be substantially adversely affected
35 by that activity, notify the person of the existence of that
36 fish or wildlife resource together with a description of the
37 fish or wildlife resource, and shall submit to the person its
38 proposals as to measures necessary to protect fish and
39 wildlife. Upon a determination by the department of the
40 necessity for onsite inspection or upon the request for an



1 onsite inspection by the affected parties, the department
2 shall notify the affected parties that it shall make an onsite
3 inspection of the activity and shall make that inspection
4 before it proposes any measure necessary to protect the
5 fish and wildlife resource. The department's description
6 of an existing fish or wildlife resource shall be specific and
7 detailed and the department shall make available upon
8 request the information upon which its conclusion is
9 based that the resource may be substantially adversely
10 affected.

11 (b) ~~(4)~~ Within 14 days from the date of receipt of the
12 department's proposals, the affected person shall notify
13 ~~the department in writing of any comments on the~~
14 ~~proposals the person shall have, except that the time~~
15 ~~period may be extended by written request of the person~~
16 ~~for a specified period of time. If the affected person does~~
17 ~~not have any comments, the person shall so notify the~~
18 ~~department in writing. Upon request, the department~~
19 *the department in writing whether the proposals are*
20 *acceptable, except that the time period may be extended*
21 *by mutual agreement. Upon request, the department*
22 shall meet with the affected person within seven days
23 from the date of receipt of that notification or by a date
24 that may be mutually agreed upon for the purpose of
25 developing proposals that are acceptable to the
26 department and the affected person. If the affected
27 person and the department are unable to develop a
28 mutually acceptable proposal, a panel of arbitrators shall
29 be established. The panel of arbitration shall be
30 established within seven days from the date of that
31 meeting, or at a time mutually agreed upon, and shall be
32 composed of one representative of the department, one
33 representative of the affected person, and a third person
34 mutually agreed upon *who has scientific expertise and*
35 *experience relevant to the disputed proposals*, or, if no
36 agreement can be reached, the third person *meeting*
37 *these qualifications* shall be appointed in the manner
38 provided by Section 1281.6 of the Code of Civil
39 Procedure. The third person shall act as chair of the panel.
40 The panel may settle ~~disagreements~~ and make binding



1 decisions regarding modifications of the activity
2 necessary to protect the fish or wildlife resource. *The*
3 *panel's decision shall be based on the best scientific*
4 *information that is reasonably available and, if it modifies*
5 *the department's proposals, shall include measures*
6 *necessary to protect fish and wildlife.* The arbitration
7 shall be completed within 14 days from the date that the
8 composition of the panel is established, unless that time
9 period is extended by mutual agreement. The expenses
10 of the department representative shall be paid by the
11 department, the expenses of the representative of the
12 affected person shall be paid by the affected person, and
13 the expenses of the chair of the panel shall be paid
14 one-half by each party. ~~At the conclusion of this process;~~
15 ~~the notification shall be deemed a complete application~~
16 ~~for the proposed project for purposes of Article 5~~
17 ~~(commencing with Section 65950) of Chapter 4.5 of~~
18 ~~Division 1 of Title 7 of the Government Code and the~~
19 ~~California Environmental Quality Act (Division 13~~
20 ~~(commencing with Section 21000) of the Public~~
21 ~~Resources Code).~~

22 (2) (A) ~~The department shall issue a notice of intent~~
23 ~~to issue a permit, or to substantively amend a permit or~~
24 ~~previously issued agreement by doing the following:~~

25 (i) ~~Mailing the notice to all organizations and~~
26 ~~individuals that have submitted a written request for such~~
27 ~~notice about the specific proposed project and to all~~
28 ~~public agencies that have jurisdiction by law with respect~~
29 ~~to the proposed project; and any one of the following:~~

30 (ii) ~~Mailing the notice to the owners and occupants of~~
31 ~~property contiguous to the location of the proposed~~
32 ~~project as identified by the applicant in the applicant's~~
33 ~~notification. Owners of such property shall be identified~~
34 ~~as shown on the latest equalized assessment roll as~~
35 ~~provided to the department by the applicant.~~

36 (iii) ~~Posting the notice at the department office for the~~
37 ~~region in which the proposed project is located.~~

38 (iv) ~~Mailing the notice to the office of the clerk of each~~
39 ~~county in which the proposed project is located. The~~
40 ~~county clerk shall post the notice in the office of the~~



1 county clerk within 24 hours of receipt for a period of at
2 least 20 days.

3 The methods of providing notice described in this
4 subparagraph do not preclude the department from
5 providing additional notice by other means if the
6 department so desires.

7 (B) The notice described in subparagraph (A) shall
8 include all of the following:

9 (i) A brief description of the proposed project,
10 including its commonly used name, if any.

11 (ii) The location of the proposed project, preferably
12 shown on a map, and the name of the applicant.

13 (iii) A brief description of the fish and wildlife
14 resources that may be substantially adversely affected by
15 the proposed project.

16 (iv) The department's proposed conditions.

17 (v) The basis and rationale for the department's
18 proposed conditions.

19 (vi) The date by which written comments are
20 required to be submitted to the department, which shall
21 be at least 20 days from the date of issuance of the notice.

22 (vii) The name and address of the person in the
23 department to whom written comments are to be
24 directed.

25 (3) Prior to issuing or denying a permit pursuant to
26 this section, the department shall consider and respond
27 to all relevant and significant written comments received
28 within the comment period from the applicant, the
29 public, and public agencies with jurisdiction by law over
30 the proposed project. Paragraph (2) and this paragraph
31 shall apply only if the department is the lead agency, the
32 project is not exempt from the California Environmental
33 Quality Act (Division 13 (commencing with Section
34 21000) of the Public Resources Code), and the Secretary
35 of the Resources Agency certifies the regulatory program
36 authorized by this chapter, pursuant to the California
37 Environmental Quality Act (Division 13 (commencing
38 with Section 21000) of the Public Resources Code).

39 (4) The department shall issue or deny a permit within
40 the time periods specified by Article 5 (commencing with



1 ~~Section 65950) of Chapter 4.5 of Division 1 of Title 7 of the~~
2 ~~Government Code and the California Environmental~~
3 ~~Quality Act (Division 13 (commencing with Section~~
4 ~~21000) of the Public Resources Code). The department~~
5 ~~shall not issue a permit if feasible alternatives or feasible~~
6 ~~mitigation measures exist that would avoid or~~
7 ~~substantially lessen any significant adverse effect that the~~
8 ~~project may have on the environment. Any party affected~~
9 ~~by a decision made by an arbitration panel pursuant to~~
10 ~~this section may petition a court of competent jurisdiction~~
11 ~~for confirmation, correction, or vacation of the decision~~
12 ~~in accordance with Chapter 4 (commencing with Section~~
13 ~~1285) of Title 9 of Part 3 of the Code of Civil Procedure.~~
14 ~~If the department issues a permit that includes~~
15 ~~modifications made by the panel of arbitrators, the~~
16 ~~department shall not be required to make any findings~~
17 ~~required pursuant to Division 13 (commencing with~~
18 ~~Section 21000) of the Public Resources Code if it~~
19 ~~determines that it cannot do so as a result of the decision~~
20 ~~of the arbitration panel.~~

21 (c) It is unlawful for any person to commence any
22 activity affected by this section until the department has
23 found that it will not substantially adversely affect an
24 existing fish or wildlife resource or until the department's
25 ~~permit conditions~~ *proposals* or the decision of a panel of
26 arbitrators have been incorporated into the activity. The
27 department shall not condition the permit on the receipt
28 of another state or federal permit.

29 (d) It is unlawful for any person to engage in an
30 activity affected by this section, unless the activity is
31 conducted in accordance with the ~~permit conditions~~
32 *department's proposals or the decision of the panel of*
33 *arbitrators.*

34 (e) If an activity involves the routine maintenance and
35 operation of water supply, drainage, flood control, or
36 waste treatment and disposal facilities, notice to, and a
37 ~~permit from~~ *an agreement with,* the department is not
38 required subsequent to the initial notification and
39 agreement unless the work as described in the agreement
40 is substantially changed or conditions affecting fish and



1 wildlife resources substantially change, and those
2 resources are adversely affected by the activity
3 conducted under the agreement. This subdivision applies
4 in any instance where notice to, and agreement with, the
5 department was attained prior to January 1, 1977.

6 (f) (1) Except as provided in paragraph (2), this
7 section does not apply to any of the following projects:

8 (A) Immediate emergency work necessary to protect
9 life or property.

10 (B) Immediate emergency repairs to public service
11 facilities necessary to maintain service as a result of a
12 disaster in a disaster-stricken area in which a state of
13 emergency has been proclaimed by the Governor
14 pursuant to Chapter 7 (commencing with Section 8550)
15 of Division 1 of Title 2 of the Government Code.

16 (C) Emergency projects undertaken, carried out, or
17 approved by a public agency to maintain, repair, or
18 restore an existing highway, as defined in Section 360 of
19 the Vehicle Code, except for a highway designated as an
20 official state scenic highway pursuant to Section 262 of the
21 Streets and Highways Code, within the existing
22 right-of-way of the highway, damaged as a result of fire,
23 flood, storm, earthquake, land subsidence, gradual earth
24 movement, or landslide, within one year of the damage.
25 Work needed in the vicinity above and below a highway
26 may be conducted outside of the existing right-of-way if
27 it is needed to stop ongoing or recurring mudslides,
28 landslides, or erosion that pose an immediate threat to the
29 highway or to restore those roadways damaged by
30 mudslides, landslides, or erosion to their predamage
31 condition and functionality. This subparagraph does not
32 exempt from this section any project undertaken, carried
33 out, or approved by a public agency to expand or widen
34 a highway damaged by fire, flood, storm, earthquake,
35 land subsidence, gradual earth movement, or landslide.

36 (2) The person performing the project shall notify the
37 department in writing within 14 days from the date of
38 commencement of a project exempted by this subdivision
39 and shall consult with the department and ~~obtain a~~
40 ~~permit from~~ *enters into an agreement with the*



1 department ~~to restore~~ whereby the person agrees to
2 restore, to the maximum extent feasible, the fish and
3 wildlife resources that were or may be substantially
4 adversely affected by the emergency project. ~~The~~
5 ~~issuance of a permit~~ For the purposes of this subdivision,
6 “feasible” has the meaning set forth in Section 15364 of
7 Title 14 of the California Code of Regulations. If the site
8 can feasibly be restored, offsite mitigation shall not be
9 required for this postemergency work. An agreement
10 entered into pursuant to this subdivision is exempt from
11 the California Environmental Quality Act (Division 13
12 (commencing with Section 21000) of the Public
13 Resources Code) and subdivisions (a) and (b) of this
14 section.

15 (3) For purposes of this subdivision, “emergency”
16 means an emergency, as defined in Section 21060.3 of the
17 Public Resources Code.

18 (g) ~~The department may issue permits to~~ Except as
19 otherwise provided in this subdivision, the department
20 may enter into agreements with applicants for a term of
21 not more than five years for the performance of activities
22 subject to this section. Each ~~permit or previously issued~~
23 agreement shall be extended automatically for one year
24 by the department at the expiration of its term when
25 requested by the ~~permittee or~~ agreementholder in
26 writing prior to the expiration of the ~~permit or~~
27 agreement, and upon payment of the appropriate fee,
28 unless the department determines that there has been a
29 substantial change in conditions or discovery of new
30 information. ~~A renewed agreement shall be deemed a~~
31 ~~permit~~ After an agreement expires, the department may
32 extend the operation of the agreement for the period
33 deemed necessary to complete the work specified in the
34 agreement, but in no event may the extension be for
35 longer than one year from the original expiration date of
36 the agreement. If there is a disagreement between the
37 department and the applicant as to whether there has
38 been a substantial change in conditions, or new
39 information discovered, the department and the
40 applicant shall proceed to arbitration pursuant to



1 ~~subdivision (b). The department may charge a fee when~~
2 ~~the permit is issued and for each renewal, extension, or~~
3 ~~amendment.~~

4 ~~SEC. 4. Section 1603.1 of the Fish and Game Code is~~
5 ~~amended to read:~~

6 ~~1603.1. (a) Every state or local governmental agency~~
7 ~~or public utility that violates Section 1601 or 1604 and~~
8 ~~every person who violates Section 1603 or 1604 is~~
9 ~~subdivision (b). In addition to charging a fee when an~~
10 ~~agreement is entered into, the department may charge~~
11 ~~a fee for each extension or amendment. If the activities~~
12 ~~subject to the agreement are also covered by a permit~~
13 ~~issued pursuant to Chapter 1.5 (commencing with~~
14 ~~Section 2050) of Division 3, or a natural community~~
15 ~~conservation plan approved pursuant to Chapter 10~~
16 ~~(commencing with Section 2800) of Division 3, or by any~~
17 ~~other state or federal regulatory program that~~
18 ~~comprehensively addresses the resources protected by~~
19 ~~this section and the department determines, in writing,~~
20 ~~that the measures contained in those provisions are~~
21 ~~adequate to protect the fish and wildlife resources~~
22 ~~affected by the activities, the department may enter into~~
23 ~~an agreement pursuant to this section for a period of~~
24 ~~longer than five years, not to exceed the term of the other~~
25 ~~permit, plan, or program. The agreement shall be subject~~
26 ~~to any provisions in the permit, plan, or program~~
27 ~~governing the extension or amendment of the permit,~~
28 ~~plan, or program.~~

29 ~~SEC. 5. Section 1603.1 of the Fish and Game Code is~~
30 ~~amended to read:~~

31 ~~1603.1. (a) Every person who violates Section 1603 or~~
32 ~~1604 is subject to a civil penalty of not more than~~
33 ~~twenty-five thousand dollars (\$25,000) for each violation.~~

34 ~~(b) The civil penalty imposed for each separate~~
35 ~~violation pursuant to this section is separate, and in~~
36 ~~addition to, any other civil penalty imposed for a separate~~
37 ~~violation pursuant to this section or any other provision~~
38 ~~of law.~~

39 ~~(c) In determining the amount of any civil penalty~~
40 ~~imposed pursuant to this section, the court shall take into~~



1 consideration the nature, circumstance, extent, and
2 gravity of the violation. In making this determination, the
3 court may consider the degree of toxicity and volume of
4 the discharge, whether the effects of the violation may be
5 reversed or mitigated, and with respect to the defendant,
6 the ability to pay, the effect of any civil penalty on the
7 ability to continue in business, any voluntary cleanup
8 efforts undertaken, any prior history of violations, the
9 gravity of the behavior, the economic benefit, if any,
10 resulting from the violation, and any other matters the
11 court determines justice may require.

12 (d) Every civil action brought under this section shall
13 be brought by the Attorney General upon complaint by
14 the department, or by the district attorney or city
15 attorney in the name of the people of the State of
16 California, and any actions relating to the same violation
17 may be joined or consolidated.

18 (e) In any civil action brought pursuant to this chapter
19 in which a temporary restraining order, preliminary
20 injunction, or permanent injunction is sought, it is not
21 necessary to allege or prove at any stage of the
22 proceeding any of the following:

23 (1) That irreparable damage will occur if the
24 temporary restraining order, preliminary injunction, or
25 permanent injunction is not issued.

26 (2) The remedy at law is inadequate. The court shall
27 issue a temporary restraining order, preliminary
28 injunction, or permanent injunction in a civil action
29 brought pursuant to this chapter without the allegations
30 and without the proof specified in this paragraph or
31 paragraph (1).

32 (f) All civil penalties collected pursuant to this section
33 shall not be considered fines or forfeitures as defined in
34 Section 13003 and shall be apportioned in the following
35 manner:

36 (1) Fifty percent shall be distributed to the county
37 treasurer of the county in which the action is prosecuted.
38 Amounts paid to the county treasurer shall be deposited
39 in the county fish and wildlife propagation fund
40 established pursuant to Section 13100.



1 (2) Fifty percent shall be distributed to the
2 department for deposit in the Fish and Game
3 Preservation Fund. These funds may be expended to
4 cover the costs of any legal actions or for any other law
5 enforcement purpose consistent with Section 9 of Article
6 XVI of the California Constitution.

7 ~~SEC. 5.—~~

8 SEC. 6. Section 1603.3 of the Fish and Game Code is
9 amended to read:

10 1603.3. The department shall provide a cover letter or
11 other written information to all applicants for ~~a permit~~ *an*
12 *agreement* pursuant to Section 1601 or 1603 that sets forth
13 all of the following information:

14 (a) The time period for review of the notification and
15 determination of whether the notification is complete.

16 (b) The information necessary for a complete
17 notification under Section 1601 or 1603, as applicable.

18 (c) An explanation of the applicant’s right to comment
19 on the department’s proposed conditions.

20 (d) The time period within which any comments must
21 be made in writing by the applicant to the department.

22 (e) The time period within which the department is
23 required to respond to the applicant’s comments, and
24 that the response must be in writing.

25 (f) An explanation of the right of the applicant to
26 arbitrate the matter.

27 (g) Information on the arbitration process, including,
28 but not limited to, the procedures for arbitration, the
29 statutory timelines for using the arbitration procedure,
30 and information about payment of the arbitrator’s fees.

31 (h) The current fee schedule for obtaining the ~~permit~~
32 *agreement*.

33 ~~SEC. 6.—~~

34 SEC. 7. Section 1603.5 of the Fish and Game Code is
35 amended to read:

36 1603.5. The department may ~~issue a permit to~~ *enters*
37 *into an agreement with* any person, state or local
38 governmental agency, or any public utility, for projects in
39 the Napa River watershed in accordance with a
40 watershed management plan developed by the Napa



1 Resource Conservation District. Neither notice to, nor a
 2 ~~permit from an agreement with~~, the department is
 3 required for a project conducted subsequent to a
 4 previous agreement issued pursuant to this section, unless
 5 the work as described in that agreement ~~or the permit~~ is
 6 substantially changed, or conditions affecting fish and
 7 wildlife resources substantially change, and those
 8 resources are adversely affected by the activity
 9 conducted under that agreement ~~or the permit~~.

10 ~~SEC. 7.—~~

11 *SEC. 8.* Section 1604 of the Fish and Game Code is
12 repealed.

13 ~~SEC. 8.—~~

14 *SEC. 9.* Section 1604 is added to the Fish and Game
15 Code, to read:

16 1604. In addition to any other remedy, any state or
 17 local governmental agency or public utility that violates
 18 Section 1601 and any person that violates Section 1603
 19 may be required *by the department, another state*
 20 *agency, a district attorney, a city attorney, the Attorney*
 21 *General, or a court* to restore fish and wildlife resources
 22 affected by or as a result of the violation, and shall be
 23 required to ~~obtain a permit from~~ *enters into an*
 24 *agreement with* the department for that purpose. ~~The~~
 25 ~~issuance of a permit~~ *An agreement entered into* pursuant
 26 to this subdivision is exempt from the California
 27 Environmental Quality Act (Division 13 (commencing
 28 with Section 21000) of the Public Resources Code) and
 29 subdivisions (a) and (b) of Section 1601 or Section 1603,
 30 as applicable. Any violation of ~~a permit issued an~~
 31 *agreement entered into* pursuant to this section is subject
 32 to ~~civil~~ *applicable civil and criminal penalties* under this
 33 chapter.

34 ~~SEC. 9.—~~

35 *SEC. 10.* Section 1607 of the Fish and Game Code is
36 amended to read:

37 1607. (a) The director may establish a schedule of
 38 fees to be charged to any entity or person subject to this
 39 chapter. The fees charged shall be established in an
 40 amount necessary to pay the total costs incurred by the



1 department in preparing and submitting proposals and
2 conducting investigations pursuant to this chapter and
3 administering and enforcing this chapter. Fees received
4 pursuant to this section shall be deposited in the Fish and
5 Game Preservation Fund as a reimbursement.

6 (b) Pursuant to subdivision (a), the department shall
7 establish the fees in an amount not less than fifty dollars
8 (\$50) or more than two thousand four hundred dollars
9 (\$2,400), as adjusted pursuant to Section 713, except that
10 fees for master ~~permits and complex permits agreements~~
11 *and complex agreements*, as defined by the department,
12 by regulation, if such ~~permit agreement~~ is requested by
13 the applicant, may exceed two thousand four hundred
14 dollars (\$2,400) if necessary to pay the total costs incurred
15 by the department in preparing and submitting
16 proposals, conducting investigations, and administering
17 and enforcing such ~~permits agreements~~.

18 ~~SEC. 10. Section 1608 is added to the Public Resources~~

19 *SEC. 11. Section 1608 is added to the Fish and Game*
20 *Code, to read:*

21 1608. The department may adopt regulations to
22 implement this chapter for the protection of the
23 environment *including regulations for the purpose of*
24 *obtaining certification by the Secretary for Resources*
25 *pursuant to Section 21080.5 of the Public Resources Code.*

26 *SEC. 12. No reimbursement is required by this act*
27 *pursuant to Section 6 of Article XIII B of the California*
28 *Constitution because the only costs that may be incurred*
29 *by a local agency or school district will be incurred*
30 *because this act creates a new crime or infraction,*
31 *eliminates a crime or infraction, or changes the penalty*
32 *for a crime or infraction, within the meaning of Section*
33 *17556 of the Government Code, or changes the definition*
34 *of a crime within the meaning of Section 6 of Article*
35 *XIII B of the California Constitution.*

