



# California Regulatory Notice Register

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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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**PROPOSED ACTION ON  
REGULATIONS**

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**TITLE 2. FAIR POLITICAL  
PRACTICES COMMISSION**

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by Sections 82011, 87303, and 87304 of the Government Code to review proposed conflict-of-interest codes, will review the proposed/amended conflict-of-interest codes of the following:

**CONFLICT-OF-INTEREST CODES**

**AMENDMENT**

MULTI-COUNTY: Yosemite Community College District

STATE AGENCY: California State Auditor’s Office

A written comment period has been established commencing on August 9, 2024, and closing on September 23, 2024. Written comments should be directed to the Fair Political Practices Commission, Attention Belen Cisneros, 1102 Q Street, Suite 3050, Sacramento, California 95811.

At the end of the 45-day comment period, the proposed conflict-of-interest codes will be submitted to the Commission’s Executive Director for their review, unless any interested person or their duly authorized representative requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed codes will be submitted to the Commission for review.

The Executive Director of the Commission will review the above-referenced conflict-of-interest codes, proposed pursuant to Government Code Section 87300, which designate, pursuant to Government Code Section 87302, employees who must disclose certain investments, interests in real property and income.

The Executive Director of the Commission, upon their own motion or at the request of any interested person, will approve, or revise and approve, or return the proposed codes to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments, or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict-of-interest codes. Any written comments must be received no later than August 9, 2024. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

**COST TO LOCAL AGENCIES**

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are not “costs mandated by the state” as defined in Government Code Section 17514.

**EFFECT ON HOUSING  
COSTS AND BUSINESSES**

Compliance with the codes has no potential effect on housing costs or on private persons, businesses, or small businesses.

**AUTHORITY**

Government Code Sections 82011, 87303 and 87304 provide that the Fair Political Practices Commission as the code-reviewing body for the above conflict-of-interest codes shall approve codes as submitted, revise the proposed codes, and approve it as revised, or return the proposed codes for revision and re-submission.

**REFERENCE**

Government Code Sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict-of-interest codes pursuant to the Political Reform Act and amend their codes when change is necessitated by changed circumstances.

**CONTACT**

Any inquiries concerning the proposed conflict-of-interest codes should be made to Belen Cisneros, Fair Political Practices Commission, 1102 Q Street, Suite 3050, Sacramento, California 95811, or email [bcisneros@fppc.ca.gov](mailto:bcisneros@fppc.ca.gov).

**AVAILABILITY OF PROPOSED  
CONFLICT-OF-INTEREST CODES**

Copies of the proposed conflict-of-interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from

the Commission should be made to Belen Cisneros, Fair Political Practices Commission, 1102 Q Street, Suite 3050, Sacramento, California 95811, or email [bcisneros@fppc.ca.gov](mailto:bcisneros@fppc.ca.gov).

## **TITLE 2. VICTIM COMPENSATION BOARD**

### **CLAIMS OF PERSONS ERRONEOUSLY CONVICTED OF FELONIES**

TITLE 2, §§ 640, 640.1, 642, 642.1, 644, 645

The California Victim Compensation Board (CalVCB) proposes to adopt the regulations and revised claim form as described below for Penal Code section 4900 claims after considering all comments, objections and recommendations regarding the proposed action.

#### **PUBLIC HEARING**

CalVCB has not scheduled a public hearing on this proposed action; however, the Board will hold a hearing if it receives a written request for a public hearing from any interested person or their authorized representative no later than 15 days before the close of the written comment period. At the hearing, if requested, the Board will hear public comment but will take no action nor provide responses at that time. The hearing, if requested, will be scheduled on a date to be determined after the written comment period ends.

#### **WRITTEN COMMENT PERIOD**

The written comment period commences on August 9, 2024, and concludes 45 days later on September 23, 2024. During this period, any interested individual or their authorized representative may submit written comments relevant to the proposed regulatory action. To be considered, the written comments must be received by CalVCB by September 23, 2024. Untimely comments will not be considered. Written comments may be mailed to:

Neil Ennes, Legislative Coordinator  
California Victim Compensation Board  
P.O. Box 48  
Sacramento, CA 95812–0048

Alternatively, written comments may be submitted by email to [regulations@victims.ca.gov](mailto:regulations@victims.ca.gov) or by facsimile (FAX) at (916) 491–6441.

#### **AUTHORITY AND REFERENCE**

Penal Code (Pen. Code) section 4906, along with Government Code section 13920, authorizes CalVCB to adopt these proposed regulations and revised claim form. The proposed regulatory action is intended to implement, interpret, and make specific Penal Code sections 4900 through 4904.

#### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

CalVCB processes claims from persons seeking compensation as an erroneously convicted felon pursuant to California Penal Code sections 4900 through 4906. The regulations governing this process specifically include sections 640 through 646 within Article 5, Title 2, of the California Code of Regulations, as well as the general hearing procedures in Article 2.5, Title 2, sections 615.1 through 619.7, to the extent those general regulations are not inconsistent or conflict with the specific regulations in Article 5.

A successful claim results in approved payment, if sufficient funds are available, by CalVCB for the claimant’s sustained injury in the amount of \$140 per day of the claimant’s wrongful imprisonment. (Pen. Code, § 4904.) To be eligible for consideration, the claimant must allege innocence of a felony conviction under California law, for which a prison sentence was imposed, and the claimant must no longer be imprisoned for that offense. (Pen. Code, §§ 4900, 4901.) In addition, the claimant must timely submit a verified *Erroneously Convicted Person (ECP) Claim Form, VCB–41–0002 (Rev. 07/2024)* with supporting documentation, within ten years after release from custody, dismissal of charges, judgment of acquittal, or pardon granted, whichever is later. (Pen. Code, § 4901.)

Generally, the claimant must prove, by a preponderance of the evidence, that (1) they did not commit the crime that resulted in their incarceration and (2) they sustained injury as a result of their erroneous conviction. (Pen. Code, § 4900, subdivision (a).) In this context, injury means that, but for the erroneous conviction, the claimant would have been free from custody. The claimant is entitled to a hearing to prove both of these elements, at which the Attorney General may appear to oppose the claim. (Pen. Code, § 4903, subdivision (a).) The Attorney General, as well as CalVCB, are bound by any express factual findings rendered by a court during a habeas proceeding or motion to vacate, including a finding of factual innocence under any standard in that proceeding. (Pen. Code, §§ 851.865, 1485.5, 1485.55, subdivisions (a)–(c) & (g), 4903, subdivision (c).)

Nonetheless, a different and expedited process applies in the following three circumstances. First, if a

court found the claimant to be factually innocent of the challenged conviction based upon proof by a preponderance of evidence that the claimant did not commit the crime, then CalVCB’s approval of a properly submitted claim is mandated, without a hearing and within 90 days. (Pen. Code, §§ 851.865, 1485.55, subdivisions (a) & (c), 4902, subdivision (a).) Second, if the conviction was vacated by a grant of habeas relief or pursuant to Penal Code section 1473.6 or 1473.7, subdivision (a)(2), and the charges were dismissed or acquitted on remand, and the Attorney General failed to timely object with clear and convicting evidence the claimant’s guilt, then CalVCB’s approval of a properly submitted claim is mandated within 90 days. (Pen. Code, §§ 4900, subdivision (b), 4902, subdivision (d).) Third and finally, if a court granted a motion under subdivision (d) of Penal Code section 1485.55 for approval of a claim based upon a conviction that was vacated by a grant of habeas relief or pursuant to Penal Code section 1473.6 or 1473.7, subdivision (a)(2), the charges were dismissed or acquitted on remand, and the district attorney failed to timely object with clear and convicting proof of the claimant’s guilt, then CalVCB’s approval of a properly submitted claim is mandated, without a hearing and within 90 days. (Pen. Code, § 1485.55, subdivision (d).) When approving any claim, even without a hearing, CalVCB may nevertheless request additional evidence and argument from the parties as needed to calculate injury. (Pen. Code, § 4904, subdivision (a).)

Since the regulations in Article 5 were last updated, new statutory changes were enacted. SB 78 (Glazer, Chapter 78, Statutes of 2024), effective January 2024, added subdivision (d) to Penal Code section 1485.55, which authorizes a claimant to file a motion in the superior court to require CalVCB’s approval of a properly submitted claim. SB 78 also authorizes CalVCB to request evidence and argument as needed to calculate compensation for every claim. Finally, SB 78 extends CalVCB’s deadlines for mandated approval of enumerated claims from 30 to 90 days after filing.<sup>1</sup> As a result of these new changes, some regulations are outdated or inconsistent with current law and require modification.

Along with these recent statutory changes, the volume of claims submitted to CalVCB has grown exponentially. For instance, the number of received claims increased by 139 percent from 28 in 2021 to 67 in 2023. This trend continues. As of June 30, 2024, CalVCB re-

ceived 47 claims, with a total of 94 expected by years end. Meanwhile, the number of denied and rejected claims similarly increased by 144 percent from 18 claims in 2021 to 44 claims in 2023. The number of approved claims also increased, albeit by 57 percent, from 7 claims in 2021 to 11 claims in 2023. As a result of this influx, new and modified regulations are needed to clarify the basis for relief.

CalVCB last revised the regulations in Article 5 governing Penal Code section 4900 claims in 2022, which became effective in January 2023. In light of the new statutory changes by SB 78, as well as the increased volume of claims, CalVCB determined that additional revisions are warranted. The modified regulations will comply with current law and provide clarity, consistency, and transparency for the process to obtain relief.

*Anticipated Benefits of the Proposed Regulation:*

The revisions will address the substantive changes effected by SB 78 to ensure consistency with current law. The revisions will also provide additional clarity for processing claims and determining eligibility. Finally, the revisions will include nonsubstantive changes that merely reorganize or rephrase existing regulations and delete duplicative sections in an effort to render the governing regulations easier to understand, especially for claimants representing themselves.

*Evaluation of Inconsistency/Incompatibility with Existing State Regulations:*

The Board did a search for any regulations related to this area and found that these are the only regulations that specifically apply to Penal Code section 4900 claims. While some of CalVCB’s general hearing regulations in Article 2.5, Title 2, sections 615.1 through 619.7 may also apply, proposed Section 640.1 confirms that, if there is any inconsistency or conflict with these general provisions, then the specific regulations in Article 5, Title 2, sections 640 through 646 shall apply. Therefore, the proposed regulations are not inconsistent or incompatible with existing state regulations.

*Document Incorporated by Reference*

Erroneously Convicted Person (ECP) Claim Form, VCB–41–0002 (Rev. 07/2024).

DISCLOSURES REGARDING THE PROPOSED ACTION

*The Board has made the following initial determinations:*

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

<sup>1</sup> In 2022, AB 160 (Committee on Budget) conditionally increased compensation effective July 2024 to adjust for inflation annually and to include time spent on supervised release, but only so long as general fund money over the multiyear forecast was available. Given the Governor’s May Revise Budget for 2024–2025, which confirmed no such money was available, this conditional amendment remains inoperable. Accordingly, no regulatory modifications are proposed as a result of AB 160.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Cost impacts on a representative private individual or business: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.

Significant effect on housing costs: None.

### RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT

The purpose of the proposed regulations is to revise, interpret, and implement the current law governing Penal Code section 4900 claims. An approved claim results in payment, if sufficient funds are available, at a set rate of \$140 per day of the claimant's wrongful incarceration for an erroneous conviction. On average, each approved claim amounts to approximately \$1 million. Even with the recent trend of increasing claims and approved payments, compensation is awarded to a limited group of individuals, historically less than 15 per year. Accordingly, the proposed regulations will not directly impact jobs or the wider economy.

*The Board has determined that the proposed regulations will not affect:*

(A) *The creation or elimination of jobs within the State of California,*

The proposed regulations do not impact jobs as they apply to a limited group of individuals seeking compensation for their wrongful incarceration as a result of an erroneous felony conviction.

(B) *The creation of new businesses or the elimination of existing businesses within the State of California, and*

The proposed regulations do not impact the creation of new businesses or elimination of existing businesses in California because they apply to a limited group of individuals seeking compensation for their wrongful incarceration as a result of an erroneous felony conviction.

(C) *The expansion of businesses currently doing business within the State of California.*

The proposed regulations do not impact the expansion of businesses currently doing business within the State of California because they apply to a limited group of individuals seeking compensation for their

wrongful incarceration as a result of an erroneous felony conviction.

*The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment:*

The Board has determined that the proposed regulations do not impact worker safety or the state's environment because they apply to a limited group of individuals seeking compensation for their wrongful incarceration as a result of an erroneous felony conviction.

### SMALL BUSINESS DETERMINATION

The Board has determined that the proposed regulations do not affect small businesses because they apply to a limited group of individuals seeking compensation for their wrongful incarceration as a result of an erroneous felony conviction.

### CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the agency 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 individuals than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Board invites interested individuals to present statements or arguments with respect to alternatives to the proposed regulation during the written comment period.

### CONTACT PERSON

Inquiries concerning the proposed administrative action may be directed to:

Neil Ennes  
California Victim Compensation Board  
P.O. Box 48  
Sacramento, CA 95812-0048  
Telephone: (916) 491-3728

The backup contact person concerning the proposed administrative action may be directed to:

Kim Gauthier  
California Victim Compensation Board  
P.O. Box 48  
Sacramento, CA 95812-0048  
Telephone: (916) 491-3754

Please direct requests for copies of the proposed text of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Neil Ennes at the above address.

AVAILABILITY OF STATEMENT OF  
REASONS, TEXT PROPOSED  
REGULATIONS AND RULEMAKING FILE

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office located at 400 R Street, Suite 500, Sacramento, California 95811. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation and the Initial Statement of Reasons. Copies may be obtained by contacting Neil Ennes at the P.O. Box or the phone number listed above.

AVAILABILITY OF CHANGED OR  
MODIFIED TEXT

After holding the hearing, if requested, and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the original proposed text, it will make the modified text available to the public at least 15 days before the Board adopts the regulation as revised. Please send requests for copies of the modified regulation to the attention of Neil Ennes at the P.O. Box indicated above. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL  
STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Neil Ennes at the above P.O. Box address.

AVAILABILITY OF DOCUMENTS  
ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons and the proposed text of the regulations in underline and strikeout can be accessed through our website at [www.victims.ca.gov/proposed-regulations/](http://www.victims.ca.gov/proposed-regulations/).

**TITLE 14. DEPARTMENT OF FISH  
AND WILDLIFE**

**ADD SECTION 685, PRESCRIBED  
HERBIVORY ON DEPARTMENT LANDS**

In accordance with Fish and Game Code section 1010, the Department of Fish and Wildlife (“Department”) proposes to add Section 685, Prescribed Herbivory on Department Lands to Title 14 of the California Code of Regulations. Proposed Section 685 would clarify the Department’s authority to enter into service contracts for prescribed herbivory treatments, including targeted grazing, for fuels reduction and/or habitat restoration purposes on Department–managed lands. Furthermore, the proposed amendments will also specify the types of animals that can be used for prescribed herbivory treatments. The proposed changes are necessary to support and expand fire resiliency work in diverse vegetation communities on Department lands across the state.

The proposed regulation described below may be adopted after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held virtually via webinar/teleconference on September 24, 2024. Instructions for participation in the webinar/teleconference hearing will be posted at <https://wildlife.ca.gov/Notices/Regulations/Prescribed-Herbivory> at least seven days in advance of the meeting.

WRITTEN COMMENT PERIOD

Written comments may be submitted at any time before or on September 24, 2024, by mail or email to the contact as follows:

California Department of Fish and Wildlife  
Regulations Unit  
Attention: Daphne Nandino, Regulatory Scientist  
P.O. Box 944209  
Sacramento, CA 94244–2090  
Email: [Regulations@wildlife.ca.gov](mailto:Regulations@wildlife.ca.gov)

AUTHORITY AND REFERENCE

Authority: Section 1010, Fish and Game Code.  
Reference: Sections 1010 and 1501.5, Fish and Game Code.

INFORMATIVE DIGEST/POLICY  
STATEMENT OVERVIEW

The Department is currently implementing traditional grazing treatments on approximately 80,000 acres per year, and seeks to increase that amount to reduce wildfire risk, improve habitat quality, and help meet statewide goals set by the Governor's Wildfire and Forest Resilience Task Force, Executive Order N-82-20 (30X30 *Initiative*), and Natural and Working Lands Strategies. To date, over \$80 million in one-time funding has been allocated to the Department to expand fuels reduction treatments across the state. Acres treated and specific activities conducted must be reported on a bi-annual basis to California Natural Resources Agency and is available for public review at [www.planscape.org](http://www.planscape.org). The Department and other state agencies are expected to quickly expand wildfire treatments to demonstrate the value of the substantial investment of one-time funds. Prescribed herbivory is a critical tool for treating the over 1.1 million acres of land the Department manages to reduce the risk of catastrophic wildfires.

Land use agreements that use a traditional grazing framework are currently the primary avenue for non-mechanical excess vegetation removal on Department lands. Under that model, lessees pay the Department to graze the grass so their cattle can consume that energetic food resource to grow and support reproduction.

The Department proposes to add section 685, Prescribed Herbivory on Department Lands, to Title 14 of the California Code of Regulations. Section 685 clarifies the authority to enter into service contracts for vegetation treatment activities using prescribed herbivory treatments, including targeted grazing, for fuels reduction and/or habitat restoration purposes on Department-managed lands. The proposed changes are necessary to support and expand fire resiliency work in diverse vegetation communities on Department lands across the state. In some circumstances, prescribed herbivory is a tool that is more feasible, cost-effective and less damaging to the environment than mechanical removal of overgrown vegetation.

BACKGROUND

Targeted grazing and traditional livestock management use the same principles; however, they differ in their goals. Traditional livestock management is focused on sustainable livestock production and reproduction, whereas targeted grazing has a primary purpose of changing vegetation composition or structure. Targeted prescribed herbivory can provide both fuels reduction and desired ancillary benefits, such as increasing native plant densities and decreasing non-

native species that might be unpalatable to cattle. The Department intends to utilize prescribed herbivory in different ways and conditions (e.g., # animals, type of animals, timing, type of vegetation species grazed) than are typical under the current standard revenue-generating land use agreements. Goat and sheep grazers, for example, are usually paid to bring their animals onto a property. They will generally consume more target species than cows at a lower cost. These animals are also more suited to working in riparian areas, which is a focal habitat type for fuels reduction for the Department.

Multiple prescribed herbivory projects will be implemented and expanded statewide in the next 5-10 years. The clarified authority provided by the proposed regulatory amendments will expand the contracting mechanisms available to the Department to work with grazers who can provide prescribed herbivory services, including goat and sheep herders that can be directed to graze site in ways that reduces fuels fire risk and also provides benefits to native plants and wildlife.

REGULATORY PROPOSAL

In order to clarify authority and expand the contracting mechanisms available to the Department to work with grazers who can provide prescribed herbivory services, including goat and sheep herders, the Department proposes to add the following section:

Section 685. Prescribed Herbivory on Department Lands.

(a) For the purposes of vegetation fuels reduction or restoration of habitat, and for the benefit of the State, the department may enter into service contracts for prescribed herbivory treatments, including targeted grazing.

(b) Cattle, goats, and sheep may be used for prescribed herbivory treatments.

BENEFITS OF THE  
PROPOSED REGULATIONS

The Department anticipates that this regulation will have positive impacts on reducing wildfire fuel risks, while providing continued opportunities to increase native plant densities and decreasing non-native species, especially those that might be unpalatable to cattle. The Department intends to utilize prescribed herbivory in different ways and conditions (e.g., number of and types of animals, timing, type of vegetation species grazed) than are typical under the current standard revenue-generating land use agreements. The clarified authority provided by the proposed regulatory amendments will expand the contracting mech-



animals available to the Department to work with grazers who can provide prescribed herbivory services, including goat and sheep herders that can be directed to graze site in ways that reduces fuels fire risk and also provides benefits to native plants and wildlife.

CONSISTENCY AND COMPATIBILITY WITH EXISTING REGULATIONS

The Legislature, through Fish and Game Code Section 1010, has authorized the Department, by and with the approval of the Department of General Services, to sell grazing permits or otherwise dispose of excess vegetation or other products, produced on lands acquired by the Department. Additionally, Fish and Game Code Section 1501.5 provides authority to enter into contracts for fish and wildlife habitat preservation, restoration, and enhancement with public and private entities whenever the department finds that the contracts will assist in meeting the department’s duty to preserve, protect, and restore fish and wildlife. The proposed regulations are neither inconsistent nor incompatible with existing state regulations in Title 14. The Department has searched the regulations in all other titles of California Code of Regulations and has found no other regulations that set forth the requirements in the Department’s proposed regulation.

DOCUMENTS INCORPORATED BY REFERENCE

None.

DOCUMENTS RELIED UPON

California Board of Forestry and Fire Protection, 2015. Prescribed Herbivory For Vegetation Treatment Projects, prepared by the Range Management Advisory Committee. Available from: <https://bof.fire.ca.gov/media/nc4n1xgj/4-4-rmac-prescribed-herbivory-white-paper.pdf>

State of California, 2021. Governor’s Wildfire and Forest Resilience Action Plan, available from: <https://wildfiretaskforce.org/action-plan/>

State of California, 2020. Executive Order (EO) 82-20 (California’s 30 x 30 initiative) — available from <https://www.gov.ca.gov/wp-content/uploads/2020/10/10.07.2020-EO-N-82-20-.pdf>

Air Resources Board, 2019. Draft California 2030 Natural and Working Lands Climate Change Implementation Plan (Natural and Working Lands Strategies). 86 pages, avail-

able from: <https://ww2.arb.ca.gov/resources/documents/nwl-implementation-draft>

DISCLOSURES REGARDING THE PROPOSED ACTION:

**Impact of the Regulatory Action/ Results of the Economic Impact Assessment**

The potential for significant statewide adverse economic impacts that might result from the proposed regulation 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 Department does not anticipate that the proposed action will have any statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed changes clarify the Department’s authority to enter into service contracts for vegetation treatment activities using prescribed herbivory for fuels reduction and/or habitat restoration purposes on Department-managed lands. This action will increase the opportunities for commercial herbivory providers and thus, will likely induce positive economic impacts.

(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; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State’s Environment:

The Department does not anticipate adverse impacts on the creation or elimination of jobs within the state. The Department does not anticipate adverse impacts on the creation of new business, the elimination of existing businesses or the expansion of businesses in California. The proposed changes are to provide clarification of the Department’s authority to enter into service contracts for vegetation treatment activities using prescribed herbivory for fuels reduction and/or habitat restoration purposes on Department-managed lands.

This regulatory change will likely increase the demand for goods and services related to prescribed herbivory that could positively impact job creation, induce the creation of new businesses, or the expansion of businesses in California. The Department does not anticipate any benefits to the health and welfare of California residents or to worker safety.

The Department anticipates benefits to the State’s environment through improved procedures to support

and expand fire resiliency work in diverse vegetation communities on Department lands across the state.

(c) Cost Impacts on Representative Person or Business:

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

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

The Department anticipates increases in expenditures for prescribed herbivory contracts that will remain within existing budgets and resources. No changes to costs or savings to other state agencies or in federal funding are anticipated. See STD 399 Addendum for more detail.

(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

The proposed regulations may affect small businesses that enter into voluntary contracts or agreements with the Department.

#### RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

(a) Effects of the Regulation on the Creation or Elimination of Jobs Within the State:

This regulatory change will likely increase the demand for goods and services related to prescribed herbivory that could positively impact job creation within the State.

(b) Effects of the Regulation on the Creation of New Businesses or the Elimination of Existing Businesses Within the State:

This regulatory change will likely increase the demand for goods and services related to prescribed herbivory that could induce the creation of new businesses with no elimination of existing businesses within the State.

(c) Effects of the Regulation on the Expansion of Businesses Currently Doing Business Within the State:

This regulatory change will likely increase the demand for goods and services related to prescribed her-

bivory that could induce the expansion of businesses currently doing business within the State.

(d) Benefits of the Regulation to the Health and Welfare of California Residents:

The Department does not anticipate impacts on the health and welfare of California residents.

(e) Benefits of the Regulation to Worker Safety:

The Department does not anticipate any benefits to worker safety from the proposed regulations because there is no impact on working conditions.

(f) Benefits of the Regulation to the State's Environment:

The Department anticipates benefits to the state's environment through improved procedures to support and expand fire resiliency work in diverse vegetation communities on Department lands across the state.

#### CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternatives to the proposed regulation it considered or that have otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the regulation is proposed, or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Department invites interested persons to present statements or arguments with respect to alternatives to the regulations during the written comment period.

#### AVAILABILITY OF RULEMAKING DOCUMENTS AND CONTACT PERSONS

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout format can be accessed through the Department website at <https://wildlife.ca.gov/notices/regulations/>.

The proposed text (the "express terms") of the regulations, as well as all related documents upon which the proposal is based (rulemaking file), are on file and available for public review at 715 P Street, Sacramento, CA 95814 (17<sup>th</sup> floor). The rulemaking file will be available electronically upon request by contacting the Department at [Regulations@wildlife.ca.gov](mailto:Regulations@wildlife.ca.gov). Inquiries concerning the regulatory process or requests for documents should be directed to:

California Department of Fish and Wildlife  
Daphne Nandino, Regulations Unit  
P.O. Box 944209  
Sacramento, CA 94244–2090  
Telephone: (916) 902–9276  
Email: [regulations@wildlife.ca.gov](mailto:regulations@wildlife.ca.gov)

Inquiries concerning the subject matter or substance of the proposed action should be directed to:

Michelle Selmon, Environmental Program  
Manager  
California Department of Fish and Wildlife  
P.O. Box 944209  
Sacramento CA 94244–2090  
Telephone: (916) 373–6613  
Email: [regulations@wildlife.ca.gov](mailto:regulations@wildlife.ca.gov)

As of the date this notice is published, the rulemaking file consists of:

1. STD Form 400
2. Notice of Proposed Action
3. Initial Statement of Reasons
4. Proposed Text of the Regulation: Addition of Section 685, Title 14, California Code of Regulations
5. Economic and Fiscal Impact Assessment (Form STD 399) and addendum
6. Documents or Reports Supporting the Proposed Regulation Change

AVAILABILITY OF THE INITIAL  
STATEMENT OF REASONS, TEXT OF  
PROPOSED REGULATIONS, AND  
RULEMAKING FILE

The rulemaking file is available online at:  
<https://wildlife.ca.gov/Notices/Regulations/Prescribed-Herbivory>.

AVAILABILITY OF CHANGED OR  
MODIFIED TEXT

After considering all the timely and relevant comments received, the Department may adopt the proposed regulation substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulation as revised. Please send requests for copies of any modified regulation to the Regulations Unit at the address above. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL  
STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by checking the website at the link provided above, or the Regulations Unit at the address above.

**TITLE 15. DEPARTMENT OF  
CORRECTIONS AND  
REHABILITATION**

INTAKE CELLS AND SECURITY/  
WELFARE CHECKS

**NOTICE IS HEREBY GIVEN** that the Secretary of the California Department of Corrections and Rehabilitation (CDCR or the Department), proposes to amend sections 3000 and 3349, and adopt new sections 3335.6 and 3343.1, of Title 15, Division 3, Chapter 1, regarding Intake Cells and Security/Welfare Checks.

PUBLIC HEARING

Date and Time:

**September 24, 2024 — 10:00 a.m. to 11:00 a.m.**

Place:

Department of Corrections and Rehabilitation  
Room 113  
9172 Laguna Springs Dr. — Building G–1  
Elk Grove, CA 95758

Purpose: To receive comments about this action.

PUBLIC COMMENT PERIOD

The public comment period begins **August 9, 2024**, and closes on **September 24, 2024**. Any person may submit written comments by mail addressed to the primary contact person listed below, or by email to [rpmb@cdcr.ca.gov](mailto:rpmb@cdcr.ca.gov), before the close of the comment period. For questions regarding the subject matter of the regulations, call the program contact person listed below.

CONTACT PERSONS

*Primary Contact*

Josh Jugum  
Telephone: (279) 223–2317  
Regulation and Policy  
Management Branch  
P.O. Box 942883  
Sacramento, CA 94283–0001

*Back-Up*

Y. Sun  
Telephone: (279) 223-2316  
Regulation and Policy  
Management Branch  
P.O. Box 942883  
Sacramento, CA 94283-0001

*Program Contact*

Deepak Sampley  
Telephone: (279) 223-3505  
Division of Adult Institutions

**AUTHORITY AND REFERENCE**

**Government Code Section 12838.5** provides that commencing July 1, 2005, CDCR succeeds to, and is vested with, all the powers, functions, duties, responsibilities, obligations, liabilities, and jurisdiction of abolished predecessor entities, such as Department of Corrections, Department of the Youth Authority, and Board of Corrections.

**Penal Code (PC) Section 5000** provides that commencing July 1, 2005, any reference to Department of Corrections in this or any code, refers to the CDCR, Division of Adult Operations. **PC Section 5050** provides that commencing July 1, 2005, any reference to the Director of Corrections in this or any other code, refers to the Secretary of the CDCR. As of that date, the office of the Director of Corrections is abolished.

**PC Section 5054** provides that commencing July 1, 2005, the supervision, management, and control of the State prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein are vested in the Secretary of the CDCR. **PC Section 5055** provides that commencing July 1, 2005, all powers and duties previously granted to and imposed upon the Department of Corrections shall be exercised by the Secretary of the CDCR. **PC Section 5058** authorizes the Director to prescribe and amend rules and regulations for the administration of prisons and for the administration of the parole of persons.

**INFORMATIVE DIGEST/POLICY  
STATEMENT OVERVIEW**

Pursuant to court orders, the department is taking steps to reduce suicides committed by incarcerated persons in CDCR custody.

**This action will:**

- Retrofit some prison cells to reduce the likelihood of suicide attempts by reducing attachment points for hanging and by increasing visibility into the cell.

- Reduce single-celling in restricted housing, as incarcerated persons with a cell partner are less likely to attempt to harm themselves.
- Establish regular security/welfare checks of restricted housing units by custody staff.

**SPECIFIC BENEFITS ANTICIPATED BY  
THE PROPOSED REGULATIONS**

The department anticipates the proposed regulations may reduce suicides and suicide attempts by incarcerated persons housed in restricted housing.

**DOCUMENTS INCORPORATED  
BY REFERENCE**

- CDCR Form 3070 (Rev. 07/24) Security/Welfare Check Manual Tracking Sheet
- CDCR Form 114 (Rev. 07/24) Housing Unit Isolation Logbook

**EVALUATION OF INCONSISTENCY/  
INCOMPATIBILITY WITH EXISTING  
LAWS AND REGULATIONS**

Pursuant to Government Code 11346.5(a)(3)(D), the department has determined the proposed regulations are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the department has concluded that these are the only regulations that concern intake cells and security/welfare checks.

**LOCAL MANDATES**

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement of costs or savings pursuant to Government Code Sections 17500-17630.

**FISCAL IMPACT STATEMENT**

- Cost or savings to any state agency: *None*.
- Cost to any local agency or school district that is required to be reimbursed: *None*.
- Other nondiscretionary cost or savings imposed on local agencies: *None*.
- Cost or savings in federal funding to the state: *None*.

**EFFECT ON HOUSING COSTS**

The department has made an initial determination that the proposed action will have no significant effect on housing costs.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

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

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS

The department has made an initial determination that the proposed regulations 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, because the proposed regulations place no obligations or requirements on any business.

EFFECT ON SMALL BUSINESSES

The department has determined that the proposed regulations will not affect small businesses. This action has no significant adverse economic impact on small business because they place no obligations or requirements on any business.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The department has determined that the proposed regulations will have no effect on the creation of new, or the elimination of existing, jobs or businesses within California, or effect the expansion of businesses currently doing business in California. The department has determined that the proposed regulation will have no effect on the state's environment or worker safety, or the welfare of California residents. The proposed regulations may benefit the health and welfare of incarcerated persons by reducing suicides and suicide attempts.

CONSIDERATION OF ALTERNATIVES

The department must determine that no reasonable alternative considered by the department or that has otherwise been identified and brought to the attention of the department would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed regulatory action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law. Interested persons are invited to present statements or arguments with respect to any alternatives to the changes pro-

posed at the scheduled hearing or during the written comment period.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS

The department has prepared and will make available the text and the Initial Statement of Reasons (ISOR) of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the department's contact person. The proposed text, ISOR, and Notice of Proposed Regulations will also be made available on the department's website: [www.cdcr.ca.gov](http://www.cdcr.ca.gov).

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons may be obtained from the department's contact person.

AVAILABILITY OF CHANGES TO PROPOSED TEXT

After considering all timely and relevant comments received, the department may adopt the proposed regulations substantially as described in this Notice. If the department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text, with the changes clearly indicated, available to the public for at least 15 days before the department adopts, amends or repeals the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this Notice. The department will accept written comments on the modified regulations for at least 15 days after the date on which they are made available.

**TITLE 16. BOARD OF NATUROPATHIC MEDICINE**

FEES

**NOTICE IS HEREBY GIVEN** that the California Board of Naturopathic Medicine (hereafter "Board") is proposing to take the action described in the Informative Digest below, after considering all comments, objections, and recommendations regarding the proposed action.

**PUBLIC HEARING**

The Board has not scheduled a public hearing on this proposed action. However, the Board will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days prior to the close of the written comment period. A hearing may be requested by making such request in writing addressed to the individuals listed under “Contact Person” in this notice.

**WRITTEN COMMENT PERIOD**

Written comments relevant to the action proposed, including those sent by mail, facsimile, or email to the addresses listed under “Contact Person” in this Notice, must be **received by the Board at its office no later than by Monday, September 23, 2024** or must be received by the Board at the hearing, should one be scheduled.

**AUTHORITY AND REFERENCE**

Pursuant to the authority vested by section(s) 122, 3622, 3634, 3680 and 3685 of the Business and Professions Code (BPC), and to implement, interpret, or make specific BPC section(s) 122, 144, 3630, 3634, 3680 and 3685, the Board is considering amending section 4240 of title 16 of the California Code of Regulations (CCR).

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

The Board is a state agency vested with the authority to regulate the practice of naturopathic doctors (BPC § 3612). The Board’s mandate and highest priority is to protect the public (BPC § 3620.1). It is the Board’s duty to enforce and administer the Naturopathic Doctors Act (Chapter 8.2 (commencing with section 3610 of Division 2 of the Business and Professions Code) (Act). The Board is authorized to establish necessary rules and regulations for the enforcement of the Act and the laws subject to its jurisdiction. (BPC § 3622.).

Pursuant to Business and Professions Code sections 3622 and 3680, the Board has the statutory authority to collect fees to carry out its consumer protection mandate, support the functions of the Board as they relate to regulating naturopathic doctors (ND) and maintain an adequate balance in its contingency fund. The fees of the Board are required to be sufficient to support the functions or operational needs of the Board.

In 2018, it was identified that the Board had a structural imbalance in its Naturopathic Doctor’s Fund (“Fund”), which would mean that the Board was pro-

jected to run out of revenue to meet its operational needs. Legislation was enacted pursuant to Senate Bill 1480 (“SB 1480” — Chapter 571 of the Statutes of 2018) to authorize fee increases to help ensure that the Board was able to meet its operational needs. Effective January 1, 2019, the Board implemented the provisions of SB 1480. SB 1480 amended the Board’s fee structure to maintain the operation of the Board and restore funds in its reserve by increasing the application, initial licensing, and renewal fees, and establishing a fee for a certified license verification at BPC section 3680.

SB 1480 increased the application fee maximum to \$600 and automatically increased and set the minimum fees for the initial license fee to \$1,000 and the renewal license fee to \$1,000, with authority to increase by regulation to specified caps as provided in BPC section 3680. The Board’s regulations were not updated to reflect this legislative fee increase, but the Board administratively implemented the fee increases as authorized by BPC section 3680.

However, since that time, it has been identified that the fees enacted by the 2018 legislation are no longer adequate to cover the Board’s expenditures and do not address the increase in future operational costs.

In March 2024, the Board’s staff completed and presented to the Board an analysis of the Board’s fee structure. This analysis was initiated to ensure that the Board was collecting sufficient revenue to fully reimburse the Board for the actual cost of processing ND license applications and issuing and renewing ND licenses. The goal of the analysis was to identify the Board’s actual budgetary need to process each initial and renewal application the Board is required to process. The Board’s only sources of revenue are fees charged for each application it processes and each license it issues and renews. The Board also has a mandate to be fully self-supporting, so it is vital that the fees charged to licensees and applicants fully represent the Board’s administrative costs. The data indicated that the full cost of fee-based services the Board provides is not adequately represented in the current fee structure, and without exception, the costs exceed the maximum fee authorized by statute. It is estimated that by Fiscal Year 2026–2027, the Board’s reserve fund will be negative.

This proposal is necessary to help ensure the Board has sufficient resources to maintain the highest priority of consumer protection and recover costs for administration and enforcement of the Act. The proposed regulations would increase the Board’s application, initial license, and renewal fees to the statutory maximums, which will help to alleviate the Board’s structural imbalance and help recover costs for services provided to applicants and licensees.

The Board proposes to amend Section 4240 of Article 7 of Division 40 of Title 16 to increase ND

license application, initial license and license renewal fees to address a structural imbalance within the Board’s budget and to pursue a reserve in the Board’s fund consistent with its mission that “Protection of the public shall be the highest priority for the Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.” (BPC section 3620.1.)

The objective of this proposed regulation is to increase the Board’s fees enough to meet its projected expenditures beginning as soon as possible, but no later than 2025 to maintain the Board’s mission of protection of the public. The Department of Consumer Affairs (DCA) provides budgetary and fiscal administrative support to the Board. According to the DCA, current Board expenditures necessary to administer its regulatory functions exceed the amount of funds collected from applicants and licensees. This proposal will increase the Board’s application, initial license and renewal fees to ensure that the Board will be able to continue to meet its consumer protection mandate by allowing the Board to continue its licensing and enforcement responsibilities. This regulatory proposal seeks to make amendments to the Board’s fees, which will help to reduce the Board’s structural budget imbalance and to maintain a sufficient fund balance reserve until the Board can increase statutory fee levels to completely eliminate the structural imbalance.

This proposal would implement necessary changes to help ensure the fiscal solvency of the Board. This includes amendments to CCR section 4240 as follows:

- The proposal increases the application fee for a Doctor of Naturopathic Medicine from \$400 to \$600 at subsection (a).
- The proposal increases the initial license fee from \$800 to \$1,200 and updates the associated table showing how the new fee would be prorated according to the applicant’s birth month and the date the license is issued per BPC section 4222 in subsection (b).
- The proposal increases the biennial renewal license fee for naturopathic doctors from \$800 to \$1,200 in subsection (c).

In addition, the Board would make the following conforming changes to CCR section 4240:

- The Board proposes to strike the word “Committee” and replace it with the words California Board of Naturopathic Medicine and add the short-form word “Board” to subsection (b).
- This proposal would strike out existing fees at subsections (d) and (f) that were superseded by statutory changes and add a new subsection (g)

to this section to reflect new fees enacted by law. The Board proposes to add these updated fees set forth in statute at BPC section 3680 at subsections (d), (f) and (g) for a late renewal fee for a license (currently set by BPC section 3680(d) at \$225), the fee for a duplicate or replacement license (currently set by BPC section 3680(f) at \$38), and the fee for a certified license verification (currently set by BPC section 3680(g) at \$30). The fees proposed to be added at subsections (d), (f) and (g) are listed in Business and Professions Code section 3680 and would therefore not constitute a fee increase but a restatement of existing law. The fees would be restated in these sections for the convenience of the regulated community and staff.

**Anticipated Benefits of the Proposal**

The Board has determined that this regulatory proposal will have the following benefits to the health and welfare of California residents:

These changes would raise application, initial license and renewal fees to the statutory maximums. California residents would benefit from the proposed regulation because the fee increases will enable the Board to carry out its statutory mandate of public protection by licensing, regulating, and disciplining NDs. Raising fees would help address a structural imbalance in the Board’s budget, ensure the Board’s regulated public is aware of the fees, and attempt to create a consistency between the Board’s expenditures to regulate licensees and protect the public and the fees assessed for carrying out those functions. The Board’s highest priority is consumer protection, and the proposed revisions will allow the Board to continue its important consumer-focused functions in the short term while the Board seeks legislative authority to increase statutory maximums for the fees it collects in the long term.

This regulatory proposal does not affect worker safety or the state’s environment.

**Evaluation of Consistency and Compatibility with Existing State Regulations**

During the process of developing this regulatory proposal, the Board has conducted a search of any similar regulations on these topics and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

**DISCLOSURES REGARDING THIS PROPOSED ACTION**

**FISCAL IMPACT ESTIMATES**

**Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in**

**Federal Funding to the State:** The proposed regulations are anticipated to increase the Board’s revenues by approximately \$122,000 per year and up to \$1.22 million over a ten–year period.

Since the Board already performs the workload associated with these programs and fees, the Board does not anticipate any additional workload or costs to implement the proposed regulations.

The Board estimates one–time information technology (IT) costs of \$4,000 to update cashiering and accounting software. Any IT costs will be absorbed within existing resources.

The proposed regulations do not result in costs or savings in federal funding to the state.

**Nondiscretionary Costs/Savings to Local Agencies:** None.

**Cost to any Local Agency or School District for which Government Code Sections 17500–17630 Require Reimbursement:** None.

**Mandate Imposed on Local Agencies or School Districts:** None.

**Significant Effect on Housing Costs:** None.

#### BUSINESS IMPACT ESTIMATES

This regulation may have an economic impact on businesses, specifically, the Board’s licensees and applicants. This determination is based upon the following facts. The regulation would increase fees charged to ND license applicants and ND licensees. To the extent these applicants apply for licensure or licensees opt to renew their licenses, the proposed regulations will impact them as described in further detail in the Initial Statement of Reasons.

However, the proposed regulations will not have a significant statewide adverse economic impact on businesses, including the ability to compete with other businesses in California, because the fee increases are considered to be minor compared to the income of most applicants and licensees in this profession. This proposal represents an incremental increase of \$200 for the ND licensing application, initial license, and license renewal fees.

**Cost Impact on Representative Private Person or Business**

The regulation would increase fees charged to ND license applicants, and ND licensees. To the extent these applicants apply for licensure or licensees opt to renew their licenses, the proposed regulations will impact them. This proposal represents a \$200 increase for ND applications, initial license, and renewal license fees.

The regulations are estimated to result in additional costs of approximately \$122,000 per year and up to \$1.22 million over a ten–year period.

Please see the Initial Statement of Reasons for further detail.

#### RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

##### **Impact on Jobs/Businesses**

The Board has determined that this regulatory proposal will not have a significant impact on the following:

- 1) the creation or elimination of jobs within the state,
- 2) the creation of new businesses or the elimination of existing businesses within the state, or,
- 3) the expansion of businesses currently doing business within the state.

This proposal would not have any of the above–referenced impacts because these costs are considered minor compared to the income of most applicants and licensees in this profession as more fully discussed in the Business Impact Estimates section above.

##### **Benefits of the Proposed Action:**

Protection of the public is the Board’s highest priority in exercising its licensing, regulatory and disciplinary functions. The Board ensures that only qualified persons are licensed naturopathic doctors by enforcing regulatory requirements, standards of practice, and by educating consumers regarding their rights.

This regulatory proposal will benefit the health and welfare of California residents because the proposal will increase the Board’s revenue and funding available to continue the Board’s enforcement, investigative, licensing, and public outreach operations. The proposal does not benefit worker safety or the state’s environment because it does not involve either worker safety or the state’s environment.

##### **Business Reporting Requirements**

The regulatory action does not require businesses to file a report with the Board.

##### **Effect on Small Business**

While the Board does not have nor does it maintain data to define if any of its licensees are a “small business” as defined in Government Code section 11342.610, the Board has made an initial determination that any adverse economic impact will not be significant for small businesses, because the increased expense to any business, small or otherwise, is not more than \$200 to \$400 per licensee, as specified.

#### CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified



and brought to its attention would be more effective in carrying out the purpose for which the action is proposed; would be as effective and less burdensome to affected private persons than the proposal described in this Notice; or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may submit comments to the Board in writing relevant to the above determinations at California Board of Naturopathic Medicine, 1747 North Market Boulevard, Suite 240, Sacramento, CA 95834, during the written comment period, or at the hearing if one is scheduled or requested.

#### AVAILABILITY OF STATEMENT OF REASONS AND RULEMAKING FILE

The Board has compiled a record for this regulatory action, which includes the Initial Statement of Reasons (ISOR), proposed regulatory text, and all the information on which this proposal is based. This material is contained in the rulemaking file and is available for public inspection upon request to the contact persons named in this notice.

#### TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Board at California Board of Naturopathic Medicine, 1747 North Market Boulevard, Suite 240, Sacramento, CA 95834.

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments, the Board, upon its own motion or at the request of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal, with the modifications clearly indicated, will be available for review and written comment for 15 days prior to its adoption from the persons designated in this Notice as the Contact Persons and will be mailed to those persons who submit written comments or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

#### AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the Final Statement of Reasons once it has been prepared by making a written request to the Contact Persons named below or by accessing the website listed below.

#### CONTACT PERSONS

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Rebecca Mitchell, Executive Officer  
Address: California Board of Naturopathic Medicine  
1747 North Market Boulevard, Suite 240  
Sacramento, CA 95834  
Telephone Number: (916) 928-5862  
Fax Number: (916) 928-4787  
Email Address: [Rebecca.Mitchell@dca.ca.gov](mailto:Rebecca.Mitchell@dca.ca.gov)

The backup contact person is:

Name: Raquel Oden, Program Analyst  
Address: California Board of Naturopathic Medicine  
1747 North Market Boulevard, Suite 240  
Sacramento, CA 95834  
Telephone Number: (916) 928-4785  
Fax Number: (916) 928-4787  
Email Address: [Raquel.Oden@dca.ca.gov](mailto:Raquel.Oden@dca.ca.gov)

#### AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Regulatory Action, the Initial Statement of Reasons, and the text of the regulations with modifications noted, as well as the Final Statement of Reasons when completed, and modified text, if any, can be accessed through the Board's website at [https://www.naturopathic.ca.gov/laws/proposed\\_regulations.shtml](https://www.naturopathic.ca.gov/laws/proposed_regulations.shtml)

### TITLE 16. BOARD OF PHARMACY

#### QUALITY ASSURANCE PROGRAMS

**NOTICE IS HEREBY GIVEN** that the California State Board of Pharmacy (Board) proposes taking the rulemaking action described below under the head-

ing Informative Digest/Policy Statement Overview. Any person interested may present statements or arguments, relevant to the action proposed, in writing. Written comments, including those sent by mail, facsimile, or email to the addresses listed under Contact Persons in this Notice, must be received by the Board at its office by September 23, 2024.

### PUBLIC HEARING

The Board has not scheduled a public hearing on this proposed action. However, the Board will hold a hearing if it receives a written request for a public hearing from any interested person, or that person's authorized representative, no later than 15 days prior to the close of the written comment period. A hearing may be requested by making such request in writing addressed to the individuals listed under "Contact Persons" in this notice.

### WRITTEN COMMENT PERIOD

Written comments relevant to the action proposed, including those sent by mail, facsimile, or email to the addresses listed under "Contact Persons" in this Notice, must be received by the Board at its office no later than September 23, 2024, or must be received by the Board at the hearing, should one be scheduled.

The Board may, after holding a hearing if requested and considering all timely and relevant comments, adopt the proposed regulations substantially as described in this notice, or may modify the proposed regulations if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the persons designated in this Notice as the Contact Persons and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

*Authority and Reference:* Pursuant to the authority vested by Business and Professions Code (BPC) sections 4005 and 4125, the Board proposes amending section 1711 in Division 17 of Title 16 of the California Code of Regulations (CCR).

### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Board is a state agency vested with the authority to regulate the pharmacy industry, including pharmacies, pharmacists, and pharmacy technicians (BPC section 4000, et seq.). The Board's mandate and mission are to protect the public (BPC section 4001.1).

Existing regulation at CCR section 1711 requires each pharmacy to institute or participate in an established Quality Assurance (QA) program that assesses and documents medication errors to determine the cause and an appropriate response as part of a mission to help prevent medication errors and improve the quality of pharmacy services provided to California consumers. This section also defines a medication error as "any variation from a prescription or drug order not authorized by the prescriber" but "does not include any variation that is corrected prior to furnishing the drug to the patient or patient's agent or any variation allowed by law." As required by this section, an investigation of each medication error shall commence as soon as reasonably possible, but no later than two business days from the date the medication error is discovered.

Generally, a QA program is intended to advance medication error prevention by analyzing, individually and collectively, investigative and other pertinent data to address the cause and contributing factors. Required elements include:

1. Date, location, and participants in the QA review,
2. Pertinent data and other information relating to the medication error reviewed and documentation of any patient contact,
3. Findings and determinations generated by the QA review, and
4. Recommended changes to pharmacy policy, procedure, systems, or processes, if any.

Workforce strains are a contributing factor to medication errors; however, the Board has received public comment that staff are prohibited from including staffing and other workforce issues in QA reporting. This proposal will directly address this problem.

This proposal will amend section 1711 of Article 2 of Division 17 of Title 16 of the CCR to ensure that QA programs capture the approximate date of the error, the staff involved, any use of automation, the type of error, and workload volume. Additionally, the proposal will require thorough review and documentation to prevent future errors. These amendments will ensure a more robust review of the circumstances surrounding each error and identification of possible contributing factors, including workload, to help prevent future medication errors.

#### ***Anticipated Benefits of Proposal***

Protection of the public is the Board's highest priority in exercising its licensing, regulatory, and disciplinary functions. The Board has determined that this regulatory proposal will have the following benefits to the health and welfare of California residents and employee safety.

This proposal updates the requirements for the QA program. These requirements have been in place, un-

changed, for 20 years and are quite broad. The amendments will ensure the QA program is up to date with the current practice of pharmacy and that pharmacies thoroughly assess and document medication errors. This will help in determining the cause of medication errors and appropriate responses to take to help prevent future errors, thereby improving the quality of pharmacy services and helping prevent future medication errors, which benefits the health and welfare of California residents and employee safety.

This regulatory proposal does not affect the state's environment.

***Evaluation of Consistency and Compatibility with Existing State Regulations***

During the process of developing this regulatory proposal, the Board conducted a search of any similar regulations on this topic and concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

DISCLOSURES REGARDING THIS PROPOSED ACTION

FISCAL IMPACT ESTIMATES

***Fiscal Impact on Public Agencies Including Costs/Savings to State Agencies or Costs/Savings in Federal Funding to the State:*** The regulations do not result in a fiscal impact to the state in the form of federal funding or any cost or savings to any state agency. The Board already ensures licensees comply with current laws and regulations related to QA programs through inspections. As a result, the Board does not anticipate any increase in workload or costs resulting from the proposed regulations. Any workload and costs of implementation are a result of current law.

***Nondiscretionary Costs/Savings to Local Agencies:*** None.

***Cost to any Local Agency or School District for which Government Code Sections 17500–17630 Require Reimbursement:*** None.

***Mandate Imposed on Local Agencies or School Districts:*** None.

***Significant Effect on Housing Costs:*** None.

***Business Impact Estimates:***

The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The proposed amendments expand on existing requirements for QA programs which will ensure thorough documentation and assessment of medication errors. Any workload or costs to comply with the pro-

posed regulations are anticipated to be incurred within normal business operations.

***Cost Impact on Representative Private Person or Business:***

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

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS:

*Impact on Jobs/New Businesses:*

The Board concludes that this proposal will not:

- (1) create jobs within California;
- (2) eliminate jobs within California;
- (3) create new businesses within California;
- (4) eliminate existing businesses within California; and
- (5) expand businesses currently doing business in the State of California.

The Board determined that this proposal will not create or eliminate jobs or businesses. This proposal will require thorough review and documentation of medication errors to prevent future errors. These amendments will ensure a more robust review of the circumstances surrounding each error and identification of possible contributing factors, including workload, in order to prevent future medication errors and improve the quality of pharmacy service, which benefits the welfare of California residents and employee safety. This proposal will not impact the state's environment.

***Benefits of Regulation:***

The Board has determined that this regulatory proposal will have the following benefits to the health and welfare of California residents and employee safety.

This proposal updates the requirements for QA program. These requirements have been in place, unchanged, for 20 years and are quite broad. The amendments will ensure the QA program is up to date with the current practice of pharmacy, and ensure that pharmacies thoroughly assess and document medication errors. This will help in determining the cause of medication errors and appropriate responses to take to help prevent future errors and improve the quality of pharmacy services, which benefits the health and welfare of California residents and employee safety.

This regulatory proposal does not affect the state's environment.

***Business Reporting Requirements***

This regulatory proposal does not require businesses to file a report with the Board.

***Effect on Small Business:***

While the Board does not have, nor does it maintain, data to determine if any of its licensees (pharmacies and clinics) are a “small business,” as defined in Government Code section 11342.610, the Board has determined that the proposed regulatory action may affect small businesses. However, the proposed changes are necessary to protect the public, and any workload or costs to comply with the proposed regulations are anticipated to be incurred within normal business operations.

**CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code section 11346.5(a)(13), the Board has determined that no reasonable alternative it considered to the regulation, or that has otherwise been identified and brought to its attention, would be more effective in carrying out the purpose for which the action is proposed, as effective and less burdensome to affected private persons than the proposal described in this Notice, or more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may submit comments — relevant to the above determinations — in writing, at the address listed below for the *Contact Persons*, during the written comment period, or at the hearing if one is scheduled or requested.

**AVAILABILITY OF INITIAL  
STATEMENT OF REASONS AND  
RULEMAKING FILE**

The Board has compiled a record for this regulatory action, which includes the Initial Statement of Reasons (ISOR), proposed regulatory text, and all the information upon which the proposal is based. This material is contained in the rulemaking file and is available for public inspection upon request to the contact persons named in this notice.

**TEXT OF PROPOSAL**

Copies of the exact language of the proposed regulations, the Initial Statement of Reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Board of Pharmacy at 2720 Gateway Oaks Drive, Suite 100, Sacramento, California 95833, or from the Board of Pharmacy’s website at [http://www.pharmacy.ca.gov/laws\\_regs/pending\\_regs.shtml](http://www.pharmacy.ca.gov/laws_regs/pending_regs.shtml).

**AVAILABILITY OF CHANGED OR  
MODIFIED TEXT**

After considering all timely and relevant comments, the Board, upon its own motion or at the request of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal, with the modifications clearly indicated, will be available for review and written comment for 15 days prior to its adoption from the persons designated in this Notice as the Contact Persons and will be mailed to those persons who submit written comments or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

**AVAILABILITY AND LOCATION OF THE  
FINAL STATEMENT OF REASONS AND  
RULEMAKING FILE**

All the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public inspection by contacting the person named below.

You may obtain a copy of the Final Statement of Reasons, once it has been prepared, by making a written request to the Contact Person named below or by accessing the website listed below.

***Contact Persons***

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Lori Martinez  
Address: Board of Pharmacy  
2720 Gateway Oaks Drive, Suite 100  
Sacramento, CA 95833  
Phone Number: (916) 518-3100  
Fax Number: (916) 574-8618  
Email Address:  
[PharmacyRulemaking@dca.ca.gov](mailto:PharmacyRulemaking@dca.ca.gov)

The backup contact person is:

Name: Julie Ansel  
Address: Board of Pharmacy  
2720 Gateway Oaks Drive, Suite 100  
Sacramento, CA 95833  
Phone Number: (916) 518-3100  
Fax Number: (916) 574-8618  
Email Address:  
[PharmacyRulemaking@dca.ca.gov](mailto:PharmacyRulemaking@dca.ca.gov)

AVAILABILITY OF DOCUMENTS  
ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations with modifications noted, as well as the Final Statement of Reasons when completed, and modified text, if any, can be accessed through the Board of Pharmacy’s website at: [https://www.pharmacy.ca.gov/laws\\_regs/pending\\_regs.shtml](https://www.pharmacy.ca.gov/laws_regs/pending_regs.shtml).

**TITLE 16. STATE BOARD OF  
OPTOMETRY**

OPTOMETRY; RADIO FREQUENCY  
TECHNOLOGY AND DEVICES;  
AUTHORIZATION AND REQUIREMENTS  
ADOPT SECTION 1572

**NOTICE IS HEREBY GIVEN** that the California State Board of Optometry (Board) is proposing to take the action described in the Informative Digest below, after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Board has not scheduled a public hearing on this proposed action. However, the Board will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days prior to the close of the written comment period. A hearing may be requested by making such request in writing addressed to the individuals listed under “Contact Person” in this notice.

WRITTEN COMMENT PERIOD

Written comments relevant to the action proposed, including those sent by mail, facsimile, or email to the addresses listed under “Contact Person” in this Notice, must be **received by the Board at its office no later than by Monday, September 23, 2024** or must be received by the Board at the hearing, should one be scheduled.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by section(s) 3010.1, 3025, and 3025.5 of the Business and Professions Code (BPC), and to implement, interpret, or make specific BPC section 3041 the Board is considering adopting Article 11.5, section 1572, of title 16 of the California Code of Regulations (CCR).

INFORMATIVE DIGEST/POLICY  
STATEMENT OVERVIEW

Dry eye disease or syndrome is a common eye condition that occurs when tears do not adequately lubricate the eye. This can cause the eye to feel uncomfortable and can cause vision problems. Dry eye disease is often caused by meibomian gland dysfunction (MGD) which is a disorder that occurs when the oil produced in the eyes is insufficient in quantity or quality. In many cases of MGD, the glands that produce the oil get clogged and the oil doesn’t drain. MGD is a common cause of dry eye syndrome and licensed optometrists are primary providers of treatment for this condition.

The authorized treatments for dry eye in California include the following:

- Over the counter eye drops.
- Prescription medicines.
- Lifestyle changes.
- Tear duct plugs.
- Surgery (ophthalmologists only; California–licensed optometrists are not authorized to perform surgery, with limited exception).
- Intense pulsed light (IPL).

Innovative treatments are available to treat MGD and dry eye syndrome. IPL is a technology used to deliver pulses of light to liquefy and release oils that have hardened and clogged glands in the eyelids. The technology is intended to reduce eyelid redness and stimulate healthy gland function. Radiofrequency, or RF, is a technology used to deliver high frequency electrical currents to the surface of skin to stimulate collagen growth.

IPL and RF technology, administered individually or as part of a combination regime, are often offered as a treatment for MGD and dry eye syndrome. In California, the law authorizes the use of IPL but does not authorize the use of RF unless the technology or device receives FDA or Board regulatory approval for the treatment of a disease or condition of the visual system. IPL received an FDA authorization in February 2021 for dry eye disease and the scope of practice for California optometrists has also explicitly authorized its use since January 1, 2022.

To date, RF has not received approval under state law for use by optometrists within their scope of practice and the FDA has not issued any approvals for RF devices with an indication that is within the scope of practice for California–licensed optometrists. However, there are several RF devices that have received FDA approval for wrinkles and other aesthetic uses, and RF devices have been in the market for over–the–counter purchase since at least 2002, when the first RF device received FDA approval for wrin-

kles and other aesthetic uses. Numerous variants are available for purchase via commonly known online retailers.

Additionally, there are studies that show the efficacy of RF for treating MGD and dry eye disease, including a 2023 study conducted by ophthalmologists that found RF treatment used along with expressing the meibomian glands reduced the signs and symptoms of dry eye syndrome.<sup>1</sup>

Other studies have examined the use of RF in combination with IPL and similarly found promising results for those suffering from MGD and dry eye syndrome. A 2023 study conducted by an ophthalmologist and an optometrist, but this time combining IPL, RF, and meibomian gland expression, found that patients suffering from moderate to severe dry eye syndrome, caused by MGD, had decreased symptoms, improved meibum quality and appearance, increased the number of expressible glands, and decreased meibomian gland loss. The study found that combining IPL, RF, and meibomian gland expression over four treatments had larger effects than when subjects were treated with just IPL and meibomian gland expression. The study concluded that “multi-frequency RF may have an added value on top of IPL and MGX [meibomian gland expression].”<sup>2</sup>

No patient harm caused by RF was found in either study.

The scope of practice for California-licensed optometrists is found at Business and Professions Code section 3041. There, the law both prescribes and limits the actions of California-licensed optometrists. The law importantly also provides a mechanism to expand the scope of practice to include “additional non-invasive devices or technology” that have either received approval via the FDA or by Board regulation for a disease or condition within the scope of practice. Specifically, the Board’s authority to pursue this regulation is found at Business and Professions Code section 3041(a)(5)(G)(2), which says that optometrists can use noninvasive devices or technology if they:

Have been approved by the board through regulation for the rational treatment of a condition or disease authorized by this chapter. Any regulation under this paragraph shall require a licensee to successfully complete an appropriate amount of clinical training to qualify to use each noninvasive medical device or technology approved by the board pursuant to this paragraph.”

<sup>1</sup> *Transcutaneous Radiofrequency-mediated Meibomian Gland Expression is an Effective Treatment for Dry Eye: A Prospective Cohort Trial*

<sup>2</sup> *Multi-Frequency RF Combined with Intense Pulsed Light Improves Signs and Symptoms of Dry Eye Disease Due to Meibomian Gland Dysfunction*

RF technology is noninvasive and has been an FDA-approved technology available for purchase over the counter for more than two decades. Studies show promise in treating patients suffering from dry eye syndrome caused by MGD, especially when combined with other treatments such as IPL and MGD expression.

Authorizing this regulation proposal will enable California-licensed optometrists to offer RF technology to their patients and expand the legal treatment options available for patients suffering from dry eye syndrome caused by MGD.

### **Anticipated Benefits of Proposal**

The Board has determined that this regulatory proposal will have the following benefits to the health and welfare of California residents. The anticipated benefits of authorizing the use by optometrists of RF technology and devices are substantial and wide-reaching, positively impacting both regulatory alignment and public welfare. Here are the key advantages:

The proposal authorizes a noninvasive technology or device that has shown effectiveness in treating dry eye disease, a common eye condition impacting millions of Californians. Under present law, California-licensed optometrists are not authorized to use RF technology or devices on their patients, even though they were trained in the technology as part of their required education and studies show that it works, especially when the RF technology or device is used in combination with other proven techniques such as IPL and meibomian gland expression. Expanding the allowable treatment options that an optometrist can use to include RF will positively benefit Californians who are suffering from dry eye disease. As patients suffering from this condition have their symptoms alleviated, their quality of life should also improve.

The proposal authorizes Therapeutic Pharmaceutical Agent (TPA)-certified optometrists who have completed clinical training to use RF technology or devices, and defines clinical training to mean that training received from the manufacturer of the device, Board-approved continuing education courses, or by receiving RF training in optometric college as part of the curriculum required to obtain the optometric degree. This implements the requirement contained in the authorizing statute that requires “a licensee to successfully complete an appropriate amount of clinical training to qualify to use each noninvasive medical device or technology approved by the board pursuant to this paragraph.”

The proposal also prohibits the use of RF technology or devices for any purpose which is outside the scope of practice of optometry in California, including an explicit prohibition on using the technology on a patient solely for aesthetic benefit and on using it after the optometric purpose for the treatment has been

achieved. This language intends to protect consumers by ensuring that licensed optometrists are only using the technology for a legitimate condition of the visual system.

**Evaluation of Consistency and Compatibility with Existing State Regulations**

During the process of developing this regulatory proposal, the Board has conducted a search of any similar regulations on these topics and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

**DISCLOSURES REGARDING THIS  
PROPOSED ACTION**

**FISCAL IMPACT ESTIMATES**

**Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:**

The regulations do not result in a fiscal impact to the state.

The regulations do not result in costs or savings in federal funding to the state.

**Nondiscretionary Costs/Savings to Local Agencies:** None.

**Cost to any Local Agency or School District for which Government Code Sections 17500–17630 Require Reimbursement:** None.

**Mandate Imposed on Local Agencies or School Districts:** None.

**Significant Effect on Housing Costs:** None.

**BUSINESS IMPACT ESTIMATES**

**Significant, Statewide Adverse Economic Impact**

The Board has made the initial determination that 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.

**Cost Impact on Representative Private Person or Business**

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

**RESULTS OF ECONOMIC IMPACT  
ASSESSMENT/ANALYSIS**

**Impact on Jobs/Businesses**

The California State Board of Optometry has determined that this regulatory proposal will not have a significant impact on the following:

- 1) the creation or elimination of jobs within the state,
- 2) the creation of new businesses or the elimination of existing businesses within the state, or,
- 3) the expansion of businesses currently doing business within the state.

Authorizing RF technology and devices for use by optometrists when treating dry eye disease is intended to provide greater access to treatment for individuals afflicted by dry eye disease. This proposal would not have any of the above-referenced impacts as explained in the “Business Impact Estimates” section of this notice.

**Benefits of Regulation:**

The California State Board of Optometry has determined that this regulatory proposal will have the following benefits to the health and welfare of California residents. The proposed regulations will authorize the use of RF technology and devices on patients with dry eye disease. By authorizing the use of this technology, consumers and patients of optometric services may benefit by having their provider be authorized to use a proven treatment.

Licensed optometrists will also benefit by being able to offer their patients a treatment that works, especially in combination with other proven and legal treatments. Authorizing optometrists to use a proven technology that works in treating a common eye condition will improve the visual health of Californians.

This regulatory proposal does not affect or relate to either worker safety or the state’s environment, as this proposal is not related to any of those issues.

**Business Reporting Requirements**

The proposal does not require businesses to file a report with the Board.

**Effect on Small Business**

The Board has determined that the proposed regulations may affect small businesses, but the regulations will not have a significant statewide adverse economic impact on small businesses because the proposal authorizes the use of a technology and device that is used to treat an eye condition for which optometrists are primary treatment providers.

**CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed; would be as effective and less burdensome to affected private persons than the proposal described in this Notice; or would be more cost-effective to af-

ected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may submit comments to the Board in writing relevant to the above determinations at 2450 Del Paso Road, Suite 105, Sacramento, California 95834 during the written comment period, or at the hearing if one is scheduled or requested.

#### AVAILABILITY OF STATEMENT OF REASONS AND RULEMAKING FILE

The Board has compiled a record for this regulatory action, which includes the Initial Statement of Reasons (ISOR), proposed regulatory text, and all the information on which this proposal is based. This material is contained in the rulemaking file and is available for public inspection upon request to the contact persons named in this notice.

#### TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Board, at 2450 Del Paso Road, Suite 105, Sacramento, California 95834.

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments, the Board, upon its own motion or at the request of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal, with the modifications clearly indicated, will be available for review and written comment for 15 days prior to its adoption from the person designated in this Notice as the Contact Person and will be mailed to those persons who submit written comments or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

#### AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the Final Statement of Reasons once it has been prepared by making a writ-

ten request to the Contact Person named below or by accessing the website listed below.

#### CONTACT PERSONS

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Gregory Pruden  
Address: California State Board of Optometry  
2450 Del Paso Road, Suite 105  
Sacramento, CA 95834  
Telephone Number: 916-574-7808  
Email Address: [Gregory.Pruden@dca.ca.gov](mailto:Gregory.Pruden@dca.ca.gov)

The backup contact person is:

Name: Randy Love  
Address: California State Board of Optometry  
2450 Del Paso Road, Suite 105  
Sacramento, CA 95834  
Telephone Number: 279-895-1471  
Email Address: [Randy.Love@dca.ca.gov](mailto:Randy.Love@dca.ca.gov)

#### AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations with modifications noted, as well as the Final Statement of Reasons when completed, and modified text, if any, can be accessed through the Board's website at <https://optometry.ca.gov/lawsregs/propregs.shtml>.

### GENERAL PUBLIC INTEREST

#### DEPARTMENT OF FISH AND WILDLIFE

#### CALIFORNIA ENDANGERED SPECIES ACT CONSISTENCY DETERMINATION NUMBER 2080-2024-003-05

**Project:** San Diego Gas and Electric Company  
Habitat Conservation Plan  
Amendment

**Location:** San Diego, Orange, and Riverside  
Counties

**Applicant:** San Diego Gas and Electric Company  
**Background**

San Diego Gas and Electric Company (SDG&E) proposes to implement certain activities that received take authorization under the federal Endangered Species



Act via a Habitat Conservation Plan Amendment (HCP Amendment) and amended incidental take permit (ITP) issued early 2023 by the United States Fish & Wildlife Service (USFWS). The HCP Amendment describes up to 820 acres of additional habitat impacts for ongoing operation and maintenance activities, wildfire fuels management, and limited new construction activities (collectively, Project) within the 2,815,930–acre SDG&E Service Area (Project Area) for its natural gas and electric infrastructure throughout San Diego, Orange, and Riverside Counties. The Project activities (Covered Activities) include, but are not limited to, pole replacements, vegetation removal for wildfire fuels management, expansion of the Moreno Valley Compressor Station, and maintenance of existing rights-of-way easement corridors. The Project also identifies activities SDG&E will implement to avoid, minimize, and fully mitigate the adverse environmental effects of the Covered Activities.

The Project activities described above are expected to incidentally take<sup>1</sup> Stephens' kangaroo rat (SKR; *Dipodomys stephensi*) where those Covered Activities take place within the Project Area. SKR could be incidentally taken because of the crushing, trampling, and trapping in association with the Covered Activities. For example, SKR could be incidentally taken due to collision with or crushing by vehicles or equipment, as these ground-dwelling species may become trapped and entombed within burrows. SKR could also be incidentally taken as a result of the capture, handling and relocation efforts intended to avoid or minimize death or injury from the Covered Activities. Additionally, indirect impacts may include displacement and degradation of suitable habitat from edge effects and increased human activity. SKR is designated as a threatened species pursuant to both the federal Endangered Species Act (ESA) (16 U.S.C. § 1531 et seq.) and the California Endangered Species Act (CESA) (Fish & Game Code, § 2050 et seq.). (See Cal. Code Regs., title 14, § 670.5, subdivision (b)(6)(C).)

SKR individuals are documented as present within the inland valleys of cismontane habitat throughout Riverside and San Diego Counties in the Project Area, therefore occupied SKR habitat exists within and adjacent to the Project Area. SKR habitat typically consists of low native and non-native annual herbs and perennial and annual grasses interspersed with large areas of bare ground. SKR is also found in sparse coastal sage scrub with shrub cover gener-

ally less than 30 percent. Based on the habitat suitability model for SKR in the USFWS *Species Report for the Stephens' Kangaroo Rat* completed in August 2021, there is approximately 52,039 acres of modeled SKR habitat in the Project Area, including 6 acres on the Moreno Compressor Station property. Modeled SKR habitat is based on the presence of suitable habitat, exclusion of urbanized and unsuitable areas, detections/observations, elevation, and slope. Because of the presence of SKR, dispersal patterns of SKR, and the presence of suitable SKR habitat within the Project Area, the USFWS determined that SKR is reasonably certain to occur within the Project Area and that Covered Activities are expected to result in the incidental take of SKR.

According to the USFWS, the Project may impact up to 14.92 acres of modeled SKR habitat within the Project Area over the duration of the HCP/ITP. Implementation of the Covered Activities will result in 2.74 acres of temporary impacts to modeled SKR habitat, 2.48 acres of Wildfire Fuels Management (Wildfire Fuels Management is defined in the HCP Amendment) impacts to modeled SKR habitat, 4.7 acres of permanent impacts to modeled SKR habitat, and 5 acres of permanent impacts to modeled SKR habitat at the Moreno Compressor Station. Therefore, the Project is expected to result in a temporary loss of up to 5.22 acres of modeled SKR habitat and the permanent loss of up to 9.7 acres of modeled SKR habitat.

Because the Project is expected to result in take of a species designated as threatened under the federal ESA, SDG&E prepared an updated HCP Amendment in support of their ITP application pursuant to section 10(a)(1)(b) of the ESA and applied to the USFWS for an amended ITP for the HCP Amendment on March 3, 2022. The USFWS formally initiated an environmental review of the HCP Amendment through a Notice of Availability (NOA) of a draft Environmental Assessment in the Federal Register on August 10, 2022. On October 20, 2023, the USFWS issued an amended ITP (ESPER004183; PRT-809637-1) to SDG&E. Issuance of a 10(a)(1) permit is a Federal action subject to ESA Section 7 consultation. The USFWS completed intra-Service formal Section 7 consultation as required by the ESA. In October 2023, USFWS issued a biological opinion (Number 23-0101396\_S7-FR\_SD) (BO) to the USFWS that analyzed the final August 2023 version of the HCP Amendment. The BO describes the Project, requires SDG&E to comply with terms of the BO and its incidental take statement (ITS), and incorporates the HCP Amendment and ITP by reference. The ITS also requires SDG&E to fully implement, comply with, and adhere to, all conservation measures contained within the HCP Amendment and the amended ITP for avoidance, minimization, and mitigation for impacts to SKR.

<sup>1</sup> Pursuant to Fish and Game Code section 86, “‘Take’ means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.” See also *Environmental Protection Center v. California Department of Forestry and Fire Protection* (2008) 44 Cal.4th 459, 507 (for purposes of incidental take permitting under Fish and Game Code section 2081, subdivision (b), “‘take’...means to catch, capture or kill”).

On June 27, 2024, the Director of the California Department of Fish and Wildlife (CDFW) received a notice from SDG&E, requesting a determination pursuant to Fish and Game Code section 2080.1 that the ITP and related HCP Amendment, and the ITS and accompanying BO are consistent with CESA for purposes of the Project and SKR. (Cal. Reg. Notice Register 2024, Number 30–Z, page 953.)

**Determination**

CDFW has determined that the ITP and related HCP Amendment, and the ITS and accompanying BO is consistent with CESA as to the Project and SKR because the mitigation measures and conditions contained in the BO and ITS, as well as the HCP Amendment and ITP, meet the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c), for authorizing incidental take of CESA-listed species. Specifically, CDFW finds that: (1) take of SKR will be incidental to an otherwise lawful activity; (2) the mitigation measures identified in the ITS, BO, ITP and HCP Amendment (Section 5.5, Operational Protocol (OP) 95 and more), will minimize and fully mitigate the impacts of the authorized take; (3) adequate funding is ensured to implement the required avoidance minimization and mitigation measures and to monitor compliance with, and effectiveness of those measures; and (4) the Project will not jeopardize the continued existence of SKR. The ITP and ITS/BO require implementation of the HCP Amendment and a variety of mitigation measures which include, but are not limited to, the following:

*Avoidance, Minimization, and Mitigation Measures*

- 1) The following measures 1–18 are outlined in Section 5.1.13 Species-Specific Protocol (OP 95) in the HCP Amendment. Impacts from Covered Activities where there is a potential for SKR to occur (SKR-Habitat) shall be avoided to the maximum extent possible. Laydown/staging areas shall not be sited in SKR-Habitat.
- 2) If impacts to SKR-Habitat cannot be avoided, a Biologist shall survey SKR-Habitat that has the potential to be impacted by Covered Activities following current USFWS protocols to determine species presence. If project timing does not allow for surveys, it shall be assumed that all SKR-Habitat to be impacted is occupied.
- 3) If surveys determine that SKR-Habitat is occupied (or assumed occupied due to lack of survey), temporary, permanent and Wildfire Fuels Management impacts that cannot be avoided shall be mitigated in kind per the mitigation ratios in the HCP Amendment Table 5.4, through land acquisition as described in the HCP Amendment Section 5.5.2.1, with the assumption that impacted habitat contains trace, low, medium, or high

density occupancy of SKR, and that the mitigation land will support high density occupancy of SKR. This mitigation shall be approved by USFWS and CDFW prior to Covered Activities occurring within suitable SKR-Habitat.

- 4) If surveys determine SKR-Habitat is not occupied, Covered Activities and impacts shall be allowed. Impacts to unoccupied SKR-Habitat shall be mitigated per the HCP Amendment Section 5.5, Table 5.3a.
- 5) Temporary impact areas within SKR-Habitat shall be re-contoured to mimic the natural landscape when feasible. SDG&E shall determine the approach to re-contouring in consultation with the SKR Biologist and the approach shall be described in the Pre-Activity Survey Report (PSR).
- 6) Nighttime construction shall be avoided in and/or adjacent to occupied SKR-Habitat. If critical work during nighttime hours is necessary, a biological monitor shall conduct a clearance survey of the access road and all work areas within 500 feet of occupied SKR-Habitat year-round.
- 7) SDG&E vehicles shall remain on existing access roads in SKR-Habitat to the maximum extent practicable. See also OP 2 (speed limits) in the HCP Amendment.
- 8) Access route(s) shall be clearly marked with pin flags or similar flagging, which shall be followed by the vehicle driver. Vehicles shall proceed into the work site along the marked and designated overland travel route and back out along the same route.
- 9) In locations where overland travel is necessary for pole replacement, the pole replacements in SKR-Habitat shall be conducted with the use of a helicopter, if possible. A helicopter shall be used to set the new pole in the pole hole as well as to string in the new conductor.
- 10) To distribute vehicle weight, plywood boards or alternate material as approved by the Biologist may be used to cover burrows within overland travel routes and work areas through SKR-Habitat.
- 11) All work within SKR-Habitat shall occur during dry conditions when soil is not wet nor following a significant rainfall event.
- 12) Except in emergencies, Covered Activities shall not occur off existing access roads when the soil is saturated or after significant rainfall events, as SKR burrows may be more susceptible to collapse and impacts from vehicular traffic.
- 13) Berms shall not be impacted within SKR-Habitat.

- 14) SDG&E shall retain a SKR Biologist<sup>2</sup> approved by USFWS and CDFW to review and monitor Covered Activities that result in ground disturbance or vegetation clearing within SKR–Habitat. SDG&E shall submit the proposed SKR Biologist’s resume to USFWS and CDFW for approval at least 30 days prior to initiation of Covered Activities within SKR–Habitat. The approved SKR Biologist shall conduct the following activities:
- a. At least 10 days prior to initiating maintenance work within SKR–Habitat, coordinate with USFWS on the implementation of the measures to minimize impacts to SKR.
  - b. Provide a tailgate briefing of the specific biological constraints required during Covered Activities to avoid and minimize impacts to SKR.
  - c. Prior to ground disturbance or vegetation clearing within SKR–Habitat, conduct a survey to identify all potential SKR burrows within and surrounding the project footprint and mark each one with a pin flag for avoidance.
  - d. Prior to ground disturbance or vegetation clearing within SKR–Habitat, evaluate all project areas in SKR–Habitat to determine the best available access routes, which shall avoid or minimize disturbance to occupied SKR–Habitat and lead from the nearest dirt access road or route into the project area.
  - e. Based on the survey findings, the SKR Biologist may recommend the erection of exclusion fencing and salvage trapping for SKR within discrete work areas (e.g., at drainage improvement work areas and where vegetation will be uprooted) where significant soil disturbance is proposed. Otherwise, the SKR Biologist shall walk a safe distance in front of vegetation trimming personnel, equipment, and any other grading implements or project–related Covered Activities to assist crews in avoiding impacts to burrows potentially occupied by SKR. The SKR Biologist shall have stop–work authority to avoid unauthorized impacts to suitable SKR–Habitat.
- f. When there is potential for direct impacts to SKR from soil disturbance and the SKR Biologist determines that exclusion fencing is warranted, the fencing design and location shall be reviewed and approved by USFWS to ensure that the fencing is of an appropriate height and is appropriately placed; the bottom of the fence is buried at least 12 inches below ground; and it is constructed in a manner that prevents SKR from digging, crawling, or hopping under or over the fence. All fencing shall remain in place during soil–disturbing Covered Activities and it shall be removed under the direction of the SKR Biologist.
  - g. For applicable work areas where the erection of exclusion fencing is warranted, determine the need to conduct salvage trapping to remove SKR from work areas. A final determination regarding the locations and plans for exclusion trapping shall be made by the SKR Biologist in consultation with USFWS and CDFW, and the SKR Biologist shall submit to USFWS and CDFW for review and approval, a detailed SKR trap and release plan prior to any impacts to SKR–Habitat. Trapping of SKR shall be conducted immediately preceding construction to minimize the likelihood that SKR have an opportunity to re–inhabit the disturbance footprint. Trapping shall be conducted for at least 5 nights, with at least 2 consecutive nights of negative results at the end of the trapping session before construction begins. Should exclusion fencing be compromised in such a way that SKR could enter the site during construction, repeat trapping may be conducted at the discretion of the SKR Biologist.
  - h. Release all SKR individuals captured for removal from work areas into adjacent habitat.
  - i. Check the integrity of all excavation unit covers, soil stockpile tarps, exclusion fencing, and any additional measures meant to exclude the SKR each morning before the start of work and each evening at the culmination of each workday in suitable SKR–Habitat.
  - j. Each morning prior to commencement of work, check all equipment in suitable SKR–Habitat underneath and inside wheel wells for wildlife. Any SKR or other animals encountered shall be removed and released in adjacent open habitat away from construction zones.

<sup>2</sup> The SKR Biologist must have completed at least 40 calendar nights performing small mammal live–trapping surveys and must have handled at least 40 individual SKR. The SKR Biologist must also have experience using exclusion fencing to salvage and exclude small mammals from construction work areas, and/or experience performing small mammal translocations in the wild. If work is occurring on Marine Corps Base Camp Pendleton (MCBCP), then the Biologist must also be approved by MCBCP.

- 15) For pole replacement work in SKR–Habitat, the first 12 inches of the pole hole shall be dug by hand, when practicable.
- 16) Any excavation (i.e., pole holes, trenches, fence posts) in SKR–Habitat shall be done in accordance with the following measures:
  - a. Excavations shall be backfilled with the excavated native soil or covered each day at the completion of work. Excavations shall be covered using rigid boards or plates, which shall then be covered by a sheet of thick plastic sheeting, the edge of which shall be buried by dirt from the excavation or by gravel/sand bags to prevent or minimize intrusion by rodents or ground–dwelling animals.
  - b. Open holes shall be fitted with a ¼–inch hardware cloth “net” located approximately 24 inches below the top of the hole to capture SKR. The use of Sonotubes (i.e., round, concrete forming tubes) in lieu of hardware cloth nets may also be used to restrict wildlife from falling into open holes. Development and utilization of alternate techniques are acceptable with review and approval by USFWS and CDFW.
  - c. Excavations shall be checked twice daily (morning and afternoon) to verify no SKR individuals are in the hole or on the net. The number of daily checks may be reduced with approval by USFWS and CDFW. Any SKR present on the net shall be removed and released into surface burrows in the immediate vicinity of the excavation.
  - d. Any potential kangaroo rat burrows (note: gopher burrows are very similar in size to SKR burrows) intersected by the dug holes shall be plugged to prevent or discourage access to the inner edge of the pole hole by rodents. Burrows shall be plugged with a circular cut piece of 2x4 slightly larger than the diameter of the burrow and secured in place with a rubber mallet.
- 17) To reduce the potential for direct impacts to SKR, SDG&E access roads within SKR–Habitat shall be maintained by mowing or weed whacking with hand tools where this maintenance method is practicable and successful in maintaining reliable SDG&E vehicle and equipment access to SDG&E Facilities at all times.
- 18) For new projects, impacts to SKR and SKR–Habitat shall only be covered through the Minor Amendment process as discussed in Section 6.5.1.2 of the HCP Amendment, including acquiring Mitigation Credits as discussed in Section 5.5 of the HCP Amendment.
- 19) For SKR, impacts to occupied habitat, as defined in Species–Specific Protocols in the HCP Amendment, will be mitigated at a 3:1 ratio. In–kind mitigation acquired will be occupied by or benefit SKR. All temporary, permanent and Wildlife Fuels Management impacts to SKR occupied habitat must be mitigated at the ratio in HCP Amendment Table 5.4, Species–Specific Mitigation Ratios for Permanent Impacts to Occupied Habitat that Require In–Kind Habitat (Attachment A). Species–Specific Mitigation requirements will also satisfy habitat mitigation requirements where applicable (i.e., impacts will not be double mitigated).
- 20) SDG&E shall mitigate in–kind for all temporary, permanent and Wildfire Fuels Management impacts to SKR through acquiring and conserving land that supports high density occupancy of SKR. SDG&E shall, for all land acquisitions mitigating impacts to SKR, prepare a land management plan that outlines all management activities for SKR. The management plan shall further include a Property Analysis Record (PAR) or similar analysis to establish the annual monitoring and maintenance costs, including a contingency of a minimum of 10 percent, adaptive management costs, and changed circumstances costs. The land management plan shall be reviewed and approved by the USFWS and CDFW.
 

SDG&E shall establish an endowment to ensure that the land management activities will be fully carried out in perpetuity by a land management entity approved by USFWS and CDFW. A conservation easement, approved in advance by USFWS and CDFW, shall be recorded over all mitigation properties naming an entity authorized to hold conservation easements pursuant to Civil Code section 815.3 as grantee. USFWS and CDFW shall be named third–party beneficiaries to the conservation easement(s). The proposed grantee and land manager shall be approved through CDFW’s due diligence process.

*Monitoring and Reporting Measures*

  - 1) Biological monitoring reports shall be provided to USFWS and CDFW reporting the results of any SKR trapping and salvage efforts. Reports shall be provided upon initiation of efforts, when there is a change in circumstance that affects SKR, and at completion of construction.
  - 2) The number of SKR observed within project footprints will be reported to the USFWS annually.
  - 3) Each year, the SDG&E will prepare an annual report to document permit compliance and implementation of the conservation strategy. Each annual report will summarize the previous calendar year’s Covered Activities and will be completed

by June 1 following the reporting year. The report delivery date may be changed with mutual agreement of SDG&E and USFWS. The annual report will be submitted to designated representatives of USFWS.

The annual report will be completed as described in the HCP Amendment and will:

- Provide the necessary information to demonstrate SDG&E is implementing the HCP Amendment successfully and in compliance with applicable HCP Amendment requirements.
- Document challenges with HCP Amendment implementation that occurred during the reporting year and the steps taken to resolve those issues.
- Document foreseeable issues, if any, with implementation that may require coordination with USFWS to fix or otherwise address. Such issues could include the infeasibility of implementing OPs or Species–Specific Protocols or acquiring mitigation for SKR.
- Make recommendations for improving the success of the conservation strategy, including revisions to OPs or Species–Specific Protocols or the implementation process.
- Document mitigation is being secured and benefiting SKR.

The annual report will organize and summarize reporting information in two ways. First, each annual report will summarize the previous calendar year’s Covered Activities, documenting all compliance requirements for the reporting year. Second, the annual report will compile and summarize impacts and mitigation account balances from the previous years, starting from the date USFWS issues HCP Amendment–related permits and/or authorizations. At a minimum, each annual report will include the following information to document the previous year’s Covered Activities.

- A summary of the annual training provided.
- A summary of permanent, temporary, and Wildfire Fuels Management impacts and impacts on Covered Species (including SKR) Tracked Habitat<sup>3</sup> and critical habitat.
- Specifically, the report will include:
  - Summary of Covered Activities completed (including table[s]).

<sup>3</sup> Impacts will be estimated on a project–by–project basis (in the PSR) and the annual report will document (1) actual impacts incurred for each vegetation community and Covered Species Tracked Habitat and (2) the cumulative total of all impacts to all vegetation communities and Covered Species Tracked Habitat. Impacts will be limited by the total impacts authorized under this Plan (i.e., 400 acres permanent, 210 acres temporary, 210 acres Wildfire Fuels Management) and by the total impacts authorized under this HCP Amendment for each Covered Species.

- Total acreage of permanent (operations and maintenance, and New Construction), temporary and Wildfire Fuels Management impacts within the Plan Area.
- Total acreage of permanent, temporary, and Wildfire Fuels Management impacts to Covered Species Tracked Habitat, and critical habitat.
- Comparison of actual impacts to the anticipated/authorized impacts identified in HCP Amendment Table 4.4 for Covered Species Tracked Habitat.
- Should total permanent, temporary, and Wildfire Fuels Management impacts, impacts to a Covered Species Tracked Habitat, or critical habitat reach 80 percent of the anticipated/authorized limit, notification will be included in the annual report.
- A summary of any observed injury or mortality–related incidental impacts to/take of SKR that occurred during the year.
- Documentation of compliance with mitigation requirements.
  - Total acreage of mitigation available to debit impacts (both approved and pending).
  - Total acreage of mitigation obtained for SKR and critical habitat during the year.
  - Total acreage of mitigation applied to offset SKR and critical habitat impacts during the year.
  - End–of–year acreage balance of mitigation remaining for SKR.
- Summary of all discoveries; encounters; relocations of SKR, including positive survey results and biological monitoring detections; and information on the number and location of species discovered during surveys and biological monitoring Covered Activities.
- Description of any adaptive management measures proposed for the following year for new mitigation lands.
- A list of all amendments or other important decisions made to date, starting with issuance of the ITP and ITS.
- Summary of sites active in the Restoration and Enhancement (R/E) Program, number of sites completed, and total acreage as it pertains to impacts being mitigated onsite.
- A list of sites selected for removal from the R/E Program because they did not meet success standards within five years or are not expected to do so. Summary of any remedial measures implemented on mitigation lands to address Changed

Circumstances or Unforeseen Circumstances as agreed to by SDG&E and USFWS.

- Additional information as mutually agreed to by SDG&E and USFWS.
- An appendix with PSRs for Covered Activities.

Although not a condition of the BO, CDFW requests a copy of the annual report to be submitted to CDFW as well. The reports should include dates construction occurred and the success of revegetation and restoration.

*Financial Security*

SDG&E has provided performance security in the form of a Letter of Credit to CDFW in the amount of \$1,253,280.00. As stated in section 5.5.2.1 of the HCP Amendment, SDG&E shall fully complete all compensatory mitigation obligations for anticipated impacts to SKR–Habitat outlined in the HCP Amendment (i.e., fully mitigate for 14.92 acres of impacts to SKR–Habitat as described above) within 18 months of issuance of the HCP or otherwise risk forfeiture of the principal performance security sum.

*Conclusion*

Pursuant to Fish and Game Code section 2080.1, further authorization or approval under CESA is not required for the Project for incidental take of Stephens’ kangaroo rat, provided SDG&E implements the Project as described in the BO, including adherence to all measures contained therein, and complies with the mitigation measures and other conditions described in the ITS and accompanying BO and the HCP Amendment and accompanying ITP. If there are any substantive changes to the Project, including changes to the mitigation measures, or if the USFWS amends or replaces the ITS and accompanying BO or the HCP Amendment and accompanying ITP, SDG&E shall be required to obtain a new consistency determination or a CESA incidental take permit for the Project from CDFW. (See generally Fish & Game Code, §§ 2080.1, 2081, subdivisions (b) and (c)).

The USFWS ITS and accompanying BO, along with the incorporated ITP and accompanying HCP Amendment include species other than SKR that are listed under both CESA and the ESA. CDFW’s determination that the ITS and ITP are consistent with CESA is limited to Stephens’ kangaroo rat.

*Literature Cited*

U.S. Fish and Wildlife Service. 2021f. Species report for Stephens’ kangaroo rat (*Dipodomys stephensi*). Version 1.2. Prepared by the Carlsbad Fish and Wildlife Office, Carlsbad, CA. August. 121 pages.

**DEPARTMENT OF FISH AND WILDLIFE**

**HABITAT RESTORATION AND ENHANCEMENT ACT  
CONSISTENCY DETERMINATION  
NUMBER 1653–2024–141–001–R1**

**Project:** Scott River Watershed Process Based Restoration Repair & Maintenance Project

**Location:** Siskiyou County

**Applicant:** Betsy Stapleton (Scott River Watershed Council)

**Background**

*Project Location:* The Scott River Watershed Process Based Restoration Repair & Maintenance Project (Project) is located along three streams, Sugar Creek, French Creek, and Patterson Creek, all tributaries to the Scott River, within the Scott River watershed, on properties owned by five different individuals (Michael and Betsy Stapleton, the Nature Conservancy, Farmers Ditch Company, Michael Kalpin, and Ecotrust Forest Management). Latitudes and longitudes of each location are as follows: 41°23’53.03” North and 122°52’12.69” West (French Creek), 41°20’27.62” North and 122°49’30.07” West (Sugar Creek), and 41° 30’ 25” North and 122° 55’ 47” West (Patterson Creek). Sugar Creek, French Creek, and Patterson Creek support populations of Coho Salmon (*Oncorhynchus kisutch*).

*Project Description:* The Scott River Watershed Council (Applicant) proposes to perform maintenance, repair, and enhancement work on three previously funded projects which served to enhance or restore habitats within Sugar Creek, French Creek, and Patterson Creek that are currently providing a net conservation benefit for Coho Salmon in the Scott River watershed.

The North Coast Regional Water Quality Control Board and California Department of Fish and Wildlife have issued four previous Permits (Notice of Applicability for Coverage under the State Water Resources Control Board General 401 Water Quality Certification Order for Small Habitat Restoration Projects and Habitat Restoration and Enhancement Act Consistency Determinations (CD)) to the Applicant for the following projects:

- Lower Sugar Creek Beaver Dam Analogue Project (WDID Number 1A171760WNSI and 1653–2018–015–001–R1),
- Mid–French Creek Side–Channel Beaver Dam Analogue Project (WDID Number 1A161386WNSI and 1653–2017–003–001–R1),

- Scott River Watershed Coho Salmon Habitat Enhancement Project (WDID Number 1A190123WNSI and 1653–2019–048–001–R1) (located on French Creek),
- Patterson Creek Accelerated Wood Recruitment Project (WDID Number 1A180129WNSI and 1653–2018–027–001–R1).

These projects include low tech, process-based restoration techniques such as the placement of large wood into streams and construction of beaver dam analogs (BDAs), in the key Scott River watershed cold water tributaries of Sugar Creek, French Creek, and Patterson Creek.

Since installation, the Applicant has maintained the restoration features by replacing washed out portions of BDAs, reweaving and adding materials to BDAs, constructing ancillary BDAs, stuffing smaller woody material into log jams, relocating logs into preferred locations in log jams, and by adding spawning gravels. These activities have been performed to support and maximize the on-going habitat value of the initial restoration projects. The existing Permits have since expired, and this CD will provide regulatory coverage to continue these maintenance, repair, and enhancement activities.

This Project will consist of a suite of maintenance activities such as: repairing and maintaining BDA complexes (on French Creek and Sugar Creek); augmenting and relocating instream wood by streamside felling, placing logs and stuffing existing jams with small woody debris (on Patterson Creek and French Creek); and augmenting spawning gravels (on French Creek).

All activities will occur at, or adjacent to, the existing restoration sites identified in the permits referenced above. The construction will mostly consist of hand tools and hand labor, but may, on occasion, require the use of tractors, excavators, trailers, and dump trucks. The total cumulative impacts associated with the Project shall not exceed 500 linear feet of streambank and five acres of project size over the five-year term of this CD.

The Project's impacts will be calculated on an annual basis and the annual impacts and total cumulative impacts will be reported in an annual report, which will be submitted by April 1 of each year.

*Project Size:* The total area of ground disturbance associated with the Project is no more than five acres and 500 linear feet. The Applicant has included project size calculations that were used to determine the total size of the Project. The proposed Project complies with the General 401 Certification for Small Habitat Restoration Projects and associated categorical exemption from the California Environmental Quality Act (Cal. Code Regs., title 14, § 15333).

*Project Associated Discharge:* Discharge of materials into Waters of the State, as defined by Water Code section 13050 subdivision (e), resulting from the Project include those associated with the following: (1) trees, logs, or rootwads, (2) natural untreated posts, (3) weed free straw, (4) soil, (5) rock, gravel, or cobble, and (6) natural vegetation.

*Project Timeframes:* Start date: August 2024

Completion date: July 2029

Work window: August 15–November 15

*Water Quality Certification Background:* Because the Project's primary purpose is habitat restoration intended to improve the quality of waters in California and improve fish spawning and rearing habitat, the North Coast Regional Water Quality Control Board (Regional Water Board) issued a Notice of Applicability (NOA) for Coverage under the State Water Resources Control Board General 401 Water Quality Certification Order for Small Habitat Restoration Projects SB12006GN (Order) (Waste Discharge Identification (WDID) Number 1A24058WNSI, Electronic Content Management Identification (ECM PIN) Number CW–894808 for the Project. The NOA describes the Project and requires the Applicant to comply with terms of the Order. Additionally, the Applicant has provided a supplemental document that sets forth measures to avoid and minimize impacts to Coho Salmon.

*Receiving Water:* Sugar Creek, French Creek, and Patterson Creek, all tributaries to the Scott River.

*Filled or Excavated Area:* Permanent area impacted: None

Temporary area impacted: 5 acres maximum

Length permanently impacted: 0 linear feet

Length temporarily impacted: 500 linear feet

*Discharge Volume:* 200 trees, logs, and rootwads, 1000 natural untreated posts, 200 bales of weed free straw, 500 cubic yards (cy) of soil and fine-grained material, 1000 cy of rock, gravel, and cobble, and 1000 cy of natural vegetation.

Regional Water Board staff determined that the Project may proceed under the Order. Additionally, Regional Water Board staff determined that the Project, as described in the Notice of Intent (NOI) complies with the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.).

*Noticing:* On July 9, 2024, the Director of the California Department of Fish and Wildlife (CDFW) received a notice from the Applicant requesting a determination pursuant to Fish and Game Code Section 1653 that the NOA, NOI, and related species protection measures are consistent with the Habitat Restoration and Enhancement Act (HREA) with respect to the Project.

Pursuant to Fish and Game Code section 1653 subdivision (c), CDFW filed an initial notice with the Office of Administrative Law on July 9, 2024, for publishing

in the General Public Interest section of the California Regulatory Notice Register (Cal. Reg. Notice File Number Z–2024–0709–03) on July 19, 2024. Upon approval, CDFW will file a final notice pursuant to Fish and Game Code section 1653 subdivision (f).

**Determination**

CDFW has determined that the NOA, NOI, and related species protection measures are consistent with HREA as to the Project and meets the conditions set forth in Fish and Game Code section 1653 for authorizing the Project.

Specifically, CDFW finds that: (1) The Project purpose is voluntary habitat restoration and the Project is not required as mitigation; (2) the Project is not part of a regulatory permit for a non–habitat restoration or enhancement construction activity, a regulatory settlement, a regulatory enforcement action, or a court order; and (3) the Project meets the eligibility requirements of the State Water Resources Control Board’s Order for Clean Water Act Section 401 General Water Quality Certification for Small Habitat Restoration Projects.

**Avoidance and Minimization Measures**

The avoidance and minimization measures for Project, as required by Fish and Game Code section 1653, subdivision (b)(4), were included in an attachment to the NOI. The specific avoidance and minimization requirements are found in the addendum titled: Scott River Watershed Process Based Restoration Repair and Maintenance Project Description\_Final.docx in the section titled, Best Management Practices and Resource Protection Measures (beginning on page 14), of the addendum.

**Monitoring and Reporting**

As required by Fish and Game Code section 1653, subdivision (g), the Applicant included a copy of the monitoring and reporting plan. The Applicant’s Monitoring and Reporting Plan provides a timeline for restoration, performance standards, and monitoring parameters and protocols. Specific requirements of the plan are found in an attachment to the NOI titled: Scott River Watershed Process Based Restoration Repair and Maintenance Project Description\_Final.docx in the section titled, Monitoring Plan (beginning on page 14), of the addendum.

**Notice of Completion**

Coverage under the State Water Resources Control Board General 401 Water Quality Certification Order for Small Habitat Restoration Projects requires the Applicant to submit a Notice of Completion (NOC) no later than 30 days after the project has been completed. A complete NOC includes at a minimum:

- photographs with a descriptive title;
- date the photograph was taken;
- name of the photographic site;

- WDID number and ECM PIN number indicated above;
- success criteria for the Project.

The NOC shall demonstrate that the Applicant has carried out the Project in accordance with the Project description as provided in the Applicant’s NOI. Applicant shall include the project name, WDID number, and ECM PIN number with all future inquiries and document submittals. Pursuant to Fish and Game Code section 1653, subdivision (g), the Applicant shall submit the monitoring plan, monitoring report, and notice of completion to CDFW as required by the General Order. Applicant shall submit documents electronically to: [Stacey.Alexander@wildlife.ca.gov](mailto:Stacey.Alexander@wildlife.ca.gov).

**Project Authorization**

Pursuant to Fish and Game Code section 1654, CDFW’s approval of a habitat restoration or enhancement project pursuant to section 1652 or 1653 shall be in lieu of any other permit, agreement, license, or other approval issued by the department, including, but not limited to, those issued pursuant to Chapter 6 (commencing with section 1600) and Chapter 10 (commencing with section 1900) of this Division and Chapter 1.5 (commencing with section 2050) of Division 3. Additionally, Applicant must adhere to all measures contained in the approved NOA and comply with other conditions described in the NOI.

If there are any substantive changes to the Project or if the Water Board amends or replaces the NOA, the Applicant shall be required to obtain a new consistency determination from CDFW. (See generally Fish & Game Code, § 1654, subdivision (c).)

**FISH AND GAME COMMISSION**

**PETITION TO LIST MORRO MANZANITA UNDER CESA**

NOTICE IS HEREBY GIVEN pursuant to the provisions of California Fish and Game Code Section 2073.3, that on July 20, 2024 the California Fish and Game Commission (Commission) received a petition from Dr. Christopher Kofron and Dr. Claudia Tyler to list morro manzanita (*Arctostaphylos morroensis*) as an endangered species under the California Endangered Species Act.

Morro manzanita can be distinguished from other species of manzanita in the vicinity by its persistent shreddy gray bark, densely hairy lower leaf surfaces and leaf bases that are truncate to somewhat cordate. The plant is endemic to the Los Osos area, San Luis Obispo County, California, occurring predominantly on Baywood fine sand. The area has a Mediterranean climate, with cool moist winters and warm dry summers. Morro manzanita occurs at elevations less than



200 meters and must re-establish from seeds in the soil seed bank.

On July 30, 2024, pursuant to Section 2073 of California Fish and Game Code, the Commission transmitted the petition to the California Department of Fish and Wildlife (Department) for review and recommendation pursuant to Section 2073.5. The Commission will publicly receive the petition at its August 14–15, 2024 meeting. The Department’s evaluation and recommendation relating to the petition is expected to be received by the Commission at its December 11–12, 2024 meeting.

For information about the petition or to submit information to the Department relating to the petitioned species, interested parties may contact Kristi Lazar, Native Plant Program Specialist, California Department of Fish and Wildlife, at P.O. Box 944209, Sacramento, California 94244–2090, or [nativeplants@wildlife.ca.gov](mailto:nativeplants@wildlife.ca.gov).

## FISH AND GAME COMMISSION

### PETITION TO LIST BEAR LAKE BUCKWHEAT UNDER CESA

NOTICE IS HEREBY GIVEN pursuant to the provisions of California Fish and Game Code Section 2073.3, that on July 16, 2024 the California Fish and Game Commission (Commission) received a petition from the California Department of Fish and Wildlife (Department), to list Bear Lake buckwheat (*Eriogonum microtheca* var. *lacus-ursi*) as an endangered species under the California Endangered Species Act.

The Bear Lake buckwheat is a subshrub in the buckwheat family with only a single known occurrence on the south shore of Big Bear Lake in San Bernardino County, California. The plant grows on a unique substrate of gray, silty, clay soil in a Jeffrey pine and juniper woodland. Bear Lake buckwheat occupies an area of less than 1.5 acres with 150 plants estimated in 2023.

In the absence of a petition from an interested party, the Department may recommend to the Commission that it add a species to the endangered species list pursuant to Section 2072.7 of the California Fish and Game Code. If the Department makes a recommendation under this section, the Department shall include the information specified in Section 2072.3 of the California Fish and Game Code. A Department recommendation under this section shall be considered by the Commission as a petition with a Departmental recommendation to accept and consider as described in subdivision (b) of Section 2073.5 of the California Fish and Game Code.

The Commission will publicly receive the petition at its August 14–15, 2024 meeting. At its October 9–10, 2024 meeting, the Commission is scheduled to consider the Department’s petition and recommendation as well as comments received to determine whether listing Bear Lake buckwheat as endangered under the California Endangered Species Act may be warranted.

For information about the petition or to submit information to the Department relating to the petitioned species, interested parties may contact Kristi Lazar, Native Plant Program Specialist, California Department of Fish and Wildlife, by mail at P.O. Box 944209, Sacramento, California 94244–2090, or email at [nativeplants@wildlife.ca.gov](mailto:nativeplants@wildlife.ca.gov).

## FISH AND GAME COMMISSION

### NOTICE OF FINDINGS FOR MILO BAKER’S LUPINE

NOTICE IS HEREBY GIVEN that the California Fish and Game Commission (Commission), at a meeting on June 15–16, 2022, found pursuant to California Fish and Game Code Section 2075.5, that the information contained in the petition to list the species Milo Baker’s lupine (*Lupinus milo-bakeri*) and other information in the record before the Commission, warrants adding Milo Baker’s lupine to the list of endangered species under the California Endangered Species Act (CESA; Fish and Game Code, Section 2050 et seq.). (See also California Code of Regulations, Title 14, Section 670.1, subsection (i).)

NOTICE IS ALSO GIVEN that, at its June 19–20, 2024, meeting, the Commission adopted the findings herein outlining the reasons for its determination.

#### I. Background and Procedural History

##### *Petition History*

On February 15, 1987, the Commission added Milo Baker’s lupine to the list of plants declared to be endangered, threatened, or rare as a threatened species. At a December 2020 meeting, the Commission received a five-year status review report on Milo Baker’s lupine from the California Department of Fish and Wildlife (Department) pursuant to Fish and Game Code Section 2077. The status review report recommended a change in status from threatened to endangered.

The Commission treats any Department five-year status review report recommending a change in status as a petition, with a Department recommendation to accept and consider the petition as required by Fish and Game Code sections 2072.7 and 2077.

At its February 10, 2021 meeting, the Commission determined that listing may be warranted, and subsequently provided notice regarding the status of Milo Baker’s lupine as a candidate species (California

Regulatory Notice Register 2021, Number 9–Z, page 226).

**Status Review Overview**

The Commission’s action, designating Milo Baker’s lupine as a candidate species, triggered the Department’s process for conducting a more detailed status review to inform the Commission’s decision on whether to list the species.

On February 23, 2022, the Department transmitted to the Commission the Department’s report, *Status Review for Milo Baker’s lupine (Lupinus milobakeri)*, dated February 8, 2022. The Commission publicly identified receipt of the Department’s status review report as part of the Commission’s April 20–21, 2022 meeting materials. On June 15, 2022, the Commission found that the information contained in the status review report for Milo Baker’s lupine and other information in the record before the Commission warranted listing Milo Baker’s lupine as an endangered species under CESA.

**Species Description**

Milo Baker’s lupine is an annual herb in the legume family that can grow to be 1–2 meters (3.3–6.6 feet) tall, with stems that are smooth or have very few hairs and have a light waxy coating. Milo Baker’s lupine blooms between June and September. Each flower is 10–16 millimeters (0.4–0.6 inch) long, pale blue–purple (rarely yellow), but becomes yellowish with age, and is made up of a large upper petal called the banner, two side petals called wings, and two fused lower petals that form a keel that is densely hairy along the edges. A large, healthy plant can produce hundreds of seeds. At the time of the listing decision made in June 2022, Milo Baker’s lupine has only been confirmed to still occur in one location near Covelo, California; this single occurrence consists of six subpopulations.

**II. Statutory and Legal Framework**

The Commission, as established by the California State Constitution, has exclusive statutory authority under California law to designate endangered, threatened, and candidate species under CESA (California Constitution, Article IV, Section 20, subdivision (b); Fish and Game Code Section 2070). The CESA listing process for this species began in the present case with a petition submitted to the Commission. The regulatory and legal process that ensued is described in some detail in the preceding section, along with related references to the Fish and Game Code and controlling regulations. The CESA listing process generally is also described in some detail in published appellate case law in California, including:

- Natural Resources Defense Council v. California Fish and Game Commission (1994) 28 Cal. App.4th 1104;

- Mountain Lion Foundation v. California Fish and Game Commission (1997) 16 Cal.4th 105;
- California Forestry Association v. California Fish and Game Commission (2007) 156 Cal.App.4th 1535;
- Center for Biological Diversity v. California Fish and Game Commission (2008) 166 Cal.App.4th 597;
- Central Coast Forest Association v. California Fish and Game Commission (2017) 2 Cal.5th 594;
- Central Coast Forest Association v. California Fish and Game Commission (2018) 18 Cal. App.5th 1191; and
- Almond Alliance of California v. California Fish and Game Commission (2022) 79 Cal.App.5th 337.

The “is warranted” determination stems from Commission obligations established by Fish and Game Code Section 2075.5. Under the provision, the Commission is required to make one of two findings for a candidate species at the end of the CESA listing process; namely, whether listing a species is warranted or is not warranted. Here, the Commission made the finding under Section 2075.5, subdivision (e)(2) that listing is warranted.

The Commission was guided in making its determinations by statutory provisions and other controlling law. The Fish and Game Code, for example, defines an endangered species under CESA as “a native species or subspecies of a bird, mammal, fish, amphibian, reptile or plant which is in serious danger of becoming extinct throughout all, or a significant portion, of its range due to one or more causes, including loss of habitat, change in habitat, overexploitation, predation, competition, or disease” (Section 2062). Similarly, the Fish and Game Code defines a threatened species under CESA as “a native species or subspecies of a bird, mammal, fish, amphibian, reptile or plant that, although not presently threatened with extinction, is likely to become an endangered species in the foreseeable future in the absence of the special protection and management efforts required by this chapter” (Section 2067).

The Commission also considered California Code of Regulations, Title 14, Section 670.1, subsection (i)(1)(A), in making its determination. The provision provides, in pertinent part, that the Commission will list the species or subspecies as endangered or threatened under CESA if the Commission determines that its continued existence is in serious danger or is threatened by any one or any combination of six factors:

1. Present or threatened modification or destruction of its habitat,
2. overexploitation,
3. predation,

4. competition,
5. disease, or
6. other natural occurrences or human-related activities.

Fish and Game Code Section 2070 provides similar guidance, providing that the Commission shall add or remove species from the list of endangered and threatened species under CESA only upon receipt of sufficient scientific information that the action is warranted. Similarly, CESA provides that it is the policy of the state, not specific to the Commission per se, that all state agencies, boards, and commissions shall seek to conserve endangered and threatened species and shall utilize their authority in furtherance of the purposes of CESA (Fish and Game Code Section 2055). The statutory guidance does not compel a particular determination by the Commission in the CESA listing context. Nevertheless, “[l]aws providing for the conservation of natural resources’ such as the CESA are of great remedial and public importance and thus should be construed liberally.” (*California Forestry Association v. California Fish and Game Commission*, supra, 156 Cal.App.4th at pages 1545–1546, citing *San Bernardino Valley Audubon Society v. City of Moreno Valley* (1996) 44 Cal.App.4th 593, 601; Fish and Game Code sections 2051 and 2052.)

Finally, in considering the six identified factors, CESA and controlling regulations require the Commission to actively seek and consider related input from the public and any interested party (see, e.g., Fish and Game Code, sections 2071, 2074.4 and 2078; California Code of Regulations, Title 14, Section 670.1, subsection (h)). The related notice obligations and public hearing opportunities before the Commission are also considerable (Fish and Game Code sections 2073.3, 2074, 2074.2, 2075, 2075.5 and 2078; California Code of Regulations, Title 14, Section 670.1, subsection (c), (e), (g) and (i); see also California Government Code Section 11120 et seq.). The referenced obligations are in addition to the requirements prescribed for the Department in the CESA listing process, including an initial evaluation of the petition, a related recommendation regarding candidacy, and a review of the candidate species’ status, culminating with a report and recommendation to the Commission as to whether listing is warranted based on the best available science (Fish and Game Code sections 2073.4, 2073.5, 2074.4 and 2074.6; California Code of Regulations, Title 14, Section 670.1, subsections (d), (f) and (h)).

### III. Factual and Scientific Bases for the Commission’s Final Determination

The factual and scientific bases for the Commission’s determination — that designating Milo Baker’s lupine as an endangered species under CESA is warranted

— are set forth in detail in the Commission’s record of proceedings, including the five-year status review report; the Department’s status review report; written and oral comments received from members of the public, the regulated community, tribal entities, and the scientific community; and other evidence included in the Commission’s record of proceedings, which is incorporated herein by reference.

The Commission determines that the continued existence of Milo Baker’s lupine in the state of California “is in serious danger or threatened by any one or any combination of” six factors as required by California Code of Regulations, Title 14, Section 670.1, subsection (i)(1)(A):

1. Present or threatened modification or destruction of its habitat,
2. overexploitation,
3. predation,
4. competition,
5. disease, or
6. other natural occurrences or human-related activities.

The Commission also determines that the information in the Commission’s record constitutes the best scientific information available and establishes that designating Milo Baker’s lupine as an endangered species under CESA is warranted. Similarly, the Commission determines that Milo Baker’s lupine is in serious danger of becoming extinct throughout all, or a significant portion, of its range due to one or more causes, including loss of habitat, change in habitat, overexploitation, predation, competition, or disease.

The items highlighted here and detailed in the following threats section represent only a portion of the complex issues aired and considered by the Commission during the CESA listing process for Milo Baker’s lupine. Similarly, the issues addressed in these findings represent some, but not all, of the evidence, issues, and considerations affecting the Commission’s final determination. Other issues aired before and considered by the Commission are addressed in detail in the record before the Commission.

#### Background

The Commission bases its “is warranted” finding for Milo Baker’s lupine most fundamentally on modification or destruction of habitat, competition, and other natural occurrences or human-related activities.

#### Threats

Milo Baker’s lupine is endangered due to:

- present or threatened modification or destruction of its habitat (see, e.g., Department’s status review report at pages 24 and 32–33, and references cited therein),

- competition (see, e.g., Department’s status review report at pages 25 and 33, and references cited therein), and
- other natural occurrences or human–related activities. In particular, natural occurrences or human–related activities of significance include:
  - direct human activities (see, e.g., Department’s status review report at pages 21–23 and 34, and references cited therein),
  - small population size (see, e.g., Department’s status review report at pages 23 and 34, and references cited therein), and
  - climate change (see, e.g., Department’s status review report at pages 25–26 and 34, and references cited therein).

The Commission finds these factors to result in a significant threat to the continued existence of Milo Baker’s lupine as explained in the Department’s status review report; this finding and the Department’s explanation are supported by the whole of the record before the Commission.

**IV. Final Determination by the Commission**

The Commission has weighed and evaluated the information for and against designating Milo Baker’s lupine as a threatened or endangered species under CESA, including scientific and other general evidence in the five–year status review report; the Department’s status review report; the Department’s related recommendations; written and oral comments received from members of the public, the regulated community, various public agencies, and the scientific community; and other evidence included in the Commission’s record of proceedings.

Based upon the evidence in the record, the Commission has determined that the best scientific information available indicates the continued existence of Milo Baker’s lupine is in serious danger of becoming extinct by modification or destruction of the species’ habitat, competition, or other natural occurrences or human–related activities, where such factors are considered individually or in combination (see, generally, California Code of Regulations, Title 14, Section 670.1, subsection (i)(1)(A); Fish and Game Code sections 2062 and 2067).

The Commission determines that there is sufficient scientific information to indicate that designating Milo Baker’s lupine as an endangered species under CESA is warranted, and that, with adoption and publication of these findings, Milo Baker’s lupine shall be listed as endangered for purposes of its legal status under CESA.

**SUMMARY OF  
REGULATORY ACTIONS**

**REGULATIONS FILED WITH THE  
SECRETARY OF STATE**

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA 95814, (916) 653–7715. Please have the agency name and the date filed (see below) when making a request.

California Health Benefit Exchange  
File # 2024–0611–01  
Eligibility, Enrollment, and Appeals Process for the Individual Exchange

In this certificate of compliance, the California Health Benefit Exchange makes permanent the amendments made in its emergency regulations. The amendments relate to definitions, abbreviations, standards for notice, standards for eligibility determination and redetermination for qualified health plans, requirements for coverage eligibility, procedures for termination of coverage, and an appeals process.

Title 10  
Amend: 6408, 6410, 6452, 6454, 6470, 6472, 6474, 6476, 6478, 6482, 6484, 6486, 6490, 6492, 6494, 6496, 6498, 6500, 6502, 6504, 6506, 6508, 6602, 6604, 6606, 6608, 6610, 6612, 6614, 6616  
Filed 07/24/2024  
Effective 07/24/2024  
Agency Contact:  
Faviola Ramirez–Adams (916) 228–8668

Department of Corrections and Rehabilitation  
File # 2024–0618–02  
Restricted Housing Units

This Certificate of Compliance action proposes to make permanent the emergency regulatory changes adopted in OAL File Number 2023–1004–01EON (readopted in OAL File Number 2024–0321–01EON). This action significantly revises existing regulations related to inmate housing. Changes include consolidating the Administrative Segregation, Security Housing, and Psychiatric Services Units (ASU, SHU, and PSU) into the Restricted Housing Unit (RHU), reducing RHU terms by 50%, eliminating consecutive RHU terms, establishing set RHU terms and eliminating subjective mitigating and aggravating factors previously used to calculate terms, eliminating the Step Down Program (SDP), increasing out–of–cell time for

inmates assigned to RHU, and increasing and expanding types and amounts of authorized privileges and personal property.

**Title 15**

Adopt: 3335.2, 3335.3, 3335.4, 3337, 3339, 3341, 3343, 3345, 3346  
 Amend: 3000, 3043, 3044, 3044.1, 3044.2, 3045.1, 3091, 3095, 3139, 3164, 3170.1, 3176, 3177, 3190, 3261.5, 3269, 3269.1, 3269.4, 3287, 3312, 3314, 3315, 3317, 3322, 3327, 3329.5, 3332, 3335, 3335.5 (renumbered to 3335.1), 3336, 3337 (renumbered to 3340), 3338 (renumbered to 3342), 3340 (renumbered to 3344), 3341.5 (renumbered to 3338), 3342 (renumbered to 3347), 3343 (renumbered to 3348), 3344 (renumbered to 3349), 3359.2, 3375, 3375.2, 3375.3, 3375.4, 3375.5, 3376, 3376.1, 3377.1, 3377.2, 3378.2, 3378.4, 3378.5, 3378.7, 3378.8, 3378.9, 3378.10, 3379  
 Repeal: 3339, 3341, 3341.1, 3341.2, 3341.3, 3341.4, 3341.6, 3341.7, 3341.8, 3341.9, 3345, 3378.3  
 Filed 07/31/2024  
 Effective 07/31/2024  
 Agency Contact: Josh Jugum (916) 798–1484

California Pollution Control Financing Authority  
 File # 2024–0719–01

California Capital Access Program for Small Businesses

In this emergency rulemaking action, the California Pollution Control Financing Authority (CPCFA) amends the process for California Capital Access Program (CalCAP) lenders to sell CalCAP loans to lenders within and outside the Capital Access Program for small businesses.

**Title 04**

Amend: 8073, 8074  
 Filed 07/29/2024  
 Effective 07/29/2024  
 Agency Contact: Kamika McGill (916) 653–0289

Fish and Game Commission

File # 2024–0716–01

White Sturgeon bag and possession limit

This second emergency readopt without changes reduces the harvest of White Sturgeon in recreational fishery by restricting the bag limit, legal size, and fish that can be landed per boat.

**Title 14**

Amend: 5.79, 5.80, 27.90, 27.92  
 Filed 07/26/2024  
 Effective 08/14/2024  
 Agency Contact: Jennifer Bacon (916) 653–4899

California State University

File # 2024–0611–02

Implementation of the Student Transfer Achievement Reform Act of 2021

This action by the Board of Trustees of the California State University — submitted to OAL for courtesy filing with the Secretary of State and for printing in the California Code of Regulations — amends and adopts regulations that implement the Student Transfer Achievement Reform Act of 2021. This action is exempt from the Administrative Procedure Act and takes effect upon filing with the Secretary of State pursuant to Education Code sections 89030 and 89030.1, respectively.

**Title 05**

Adopt: 40405.5  
 Amend: 40803, 40803.1, 40804, 40804.1, 40405, 40405.1, 40405.2  
 Filed 07/24/2024  
 Effective 07/24/2024  
 Agency Contact: Jason Taylor (562) 951–4500

Department of Human Resources

File # 2024–0620–02

Transportation Expenses — Excluded Employees

In this request for filing and printing pursuant to Government Code section 11343.8, the Department of Human Resources is amending regulations pertaining to transportation expenses for those state officers and employees excluded from, or not otherwise subject to, the Ralph C. Dills Act (Government Code section 3512 et seq.). This action is exempt from the Administrative Procedure Act pursuant to Government Code section 3539.5(b).

**Title 02**

Amend: 599.626.1  
 Filed 07/29/2024  
 Effective 07/29/2024  
 Agency Contact: Theresa Reid (916) 324–0526

Department of Industrial Relations

File # 2024–0611–06

Labor Code Section 62.5(f) Employer Assessments

This action adopts an assessment waiver for the Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Labor Enforcement and Compliance Fund Assessment, Occupational Safety and Health Fund Assessment, and Uninsured Employers Fund Assessment amounts. This action was submitted as exempt from the rulemaking provisions of the Administrative Procedure Act and OAL review pursuant to Labor Code section 62.5.

Title 08  
Adopt: 15606.1  
Amend: 15600, 15601, 15603, 15605, 15606,  
15608, 15611  
Filed 07/24/2024  
Effective 07/24/2024  
Agency Contact: Josh Iverson (916) 574-8692

Office of Environmental Health Hazard Assessment  
File # 2024-0703-02  
Amend Conflict-of-Interest Code

This is a conflict-of-interest code filing that has been approved by the Fair Political Practices Commission and is being submitted for filing with Secretary of State and printing only.

Title 02  
Amend: 54700  
Filed 07/30/2024  
Effective 08/29/2024  
Agency Contact: Monet Vela (916) 323-2517

Department of Financial Protection and Innovation  
File # 2024-0612-01  
Broker Dealer Petition to Adopt/Repeal Regulation

This action by the Department of Financial Protection and Innovation makes changes without regulatory effect to fix numbering errors, account for the renaming of an agency, and to update statutory references.

Title 10  
Amend: 260.217  
Filed 07/25/2024  
Agency Contact: DeEtte Phelps (916) 477-9095

Department of Social Services  
File # 2024-0621-03  
Repeal Quality Control from CalWORKs MPP

This action without regulatory effect deletes all Manual of Policies and Procedures (MPP) Aid to Families with Dependent Children (AFDC) Quality Control (QC) and QC review requirements and procedures which have become obsolete and superseded by the California Work Opportunity and Responsibility to Kids (CalWORKs) program pursuant to Assembly Bill 1542 (Chapter 270, Statutes of 1997).

Title MPP  
Amend: 40-105, 40-131, 40-181, 40-200  
Repeal: 40-201, 40-203, 40-205, 40-207, 40-209,  
44-206.25, 89-115.21  
Filed 07/24/2024  
Agency Contact: Tyler Penn (916) 204-0337

Air Resources Board  
File # 2024-0618-01  
2023 State Area Designations

This action by the Air Resources Board (“ARB”) amends the Area Designations for State Ambient Air Quality Standards as applied to some state areas based upon annual assessments of local compliance with ambient air quality standards for ozone, hydrogen sulfide, and fine particulate matter, using the four available Area Designations of Nonattainment, Nonattainment-Transitional, Attainment, or Unclassified. Specifically, this action changes the area designations for ozone as follows: San Francisco Bay Area Air Basin from Nonattainment to Nonattainment-Transitional; Butte County, within the Sacramento Valley Air Basin, from Nonattainment to Nonattainment-Transitional; Sutter and Yuba Counties, within the Sacramento Valley Air Basin, from Nonattainment to Nonattainment-Transitional; Amador, Calaveras, and Placer Counties, within the Mountain Counties Air Basin, from Nonattainment to Nonattainment-Transitional; and the Lake Tahoe Air Basin from Nonattainment to Nonattainment-Transitional. This action also changes the area designation for hydrogen sulfide for Riverside County, within the Mojave Desert Air Basin, from Unclassified to Nonattainment. This action also changes the area designation for fine particulate matter for Butte County, within the Sacramento Valley Air Basin, from Nonattainment to Attainment.

Title 17  
Amend: 60201, 60208, 60210  
Filed 07/31/2024  
Effective 10/01/2024  
Agency Contact:  
Bradley Bechtold (279) 208-7266

Board of Pharmacy  
File # 2024-0619-02  
Continuing Education

This regular rulemaking action by the California State Board of Pharmacy implements the statutory requirement that pharmacists and pharmacy technicians complete at least one hour of cultural competency education as a continuing education requirement for license renewal. This action also amends the pharmacist license renewal continuing education requirements regulation to add cross-references to continuing education requirements for pharmacists located in other provisions of statute and regulation.

Title 16  
 Adopt: 1732.8  
 Amend: 1732.5  
 Filed 07/29/2024  
 Effective 07/29/2024  
 Agency Contact: Lori Martinez (916) 518–3078

Department of Food and Agriculture  
 File # 2024–0624–01  
 False Codling Moth Eradication Area

This regular rulemaking action by the Department of Food and Agriculture makes corrections to the list of plant species identified as hosts for the false codling moth (*Thaumatotibia leucotreta*) and clarifies that the identification as a host applies to all parts the listed plants.

Title 03  
 Amend: 3591.22  
 Filed 07/30/2024  
 Effective 10/01/2024  
 Agency Contact: Rachel Avila (916) 698–2947

Department of Justice  
 File # 2024–0617–01  
 Verification of Hunting Licenses

This regular rulemaking action by the Department of Justice specifies the procedure for a firearms dealer to submit documentation of hunting license validity confirmation to the Department of Justice in situations where existing law requires the dealer to confirm the purchaser or transferee possesses a valid hunting license as a condition for the sale or transfer of a firearm.

Title 11  
 Adopt: 4027  
 Filed 07/24/2024  
 Effective 10/01/2024  
 Agency Contact: Marlon Martinez (213) 269–6437

Department of Justice  
 File # 2024–0617–02  
 Dealer Video and Audio Surveillance Certification

This action amends the requirements for firearms dealers’ initial placement on the Centralized List (the list maintained by the Department of Justice of all persons licensed to sell firearms pursuant to Penal Code section 26715) and for renewal of placement on the Centralized List. The action adds, for purposes of initial placement on the Centralized List, the requirement of a valid certificate of registration with the California Department of Tax and Fee Administration for payment of excise taxes. The action adds, for purposes of renewal of placement on the Centralized List, a requirement that a licensee certify that its business

premises are monitored by a digital video and audio surveillance system pursuant to Penal Code section 26806 and that the system is in proper working order.

Title 11  
 Amend: 4017, 4018, 4021  
 Filed 07/30/2024  
 Effective 10/01/2024  
 Agency Contact: Marlon Martinez (213) 269–6437

Department of Rehabilitation  
 File # 2024–0614–03  
 Client–Owned Vehicle Use

In this regular rulemaking, the Department of Rehabilitation (“DOR”) proposes to amend regulations to change the mileage rate used to provide funding to a client for fuel when they must use their personally owned vehicle to participate in their vocational rehabilitation programs. DOR is also amending regulations to use gender–neutral language.

Title 09  
 Amend: 7162  
 Filed 07/29/2024  
 Effective 10/01/2024  
 Agency Contact: Daisy Hughes (916) 558–5832

State Water Resources Control Board  
 File # 2024–0613–02  
 Hexavalent Chromium Maximum Contaminant Level

In this rulemaking action, the State Water Resources Control Board (SWRCB) adopts regulations for a hexavalent chromium maximum containment level (MCL) of 10 micrograms per liter and related requirements, including establishing a detection limit for purposes of reporting, specifying analytical methods to be used, identifying the best available technology for treatment, setting public notification and consumer confidence report language, establishing a compliance schedule based on public water system size, requiring Tier 2 public notification for MCL exceedances prior to applicable compliance dates, and establishing requirements for compliance and operations plans.

Title 22  
 Amend: 64415, 64431, 64432, 64447.2, 64463.4, 64465, 64481  
 Filed 07/24/2024  
 Effective 10/01/2024  
 Agency Contact: Melissa Hall (916) 591–0318

Department of Corrections and Rehabilitation  
 File # 2024–0614–04  
 Body–Worn Cameras

In this regular rulemaking, the Department of Corrections and Rehabilitation (“CDCR”) is expanding the use of a body–worn camera (“BWC”) to four

additional institutions. Additionally, CDCR is (1) deeming BWC camera equipment and all information collected through the use of a BWC “CDCR property and records,” (2) outlining the circumstances under which a correctional officer or correctional sergeant may be granted an opportunity to review their own BWC recordings, (3) specifying what happens when a correctional officer or correctional sergeant is denied approval to review their own BWC recordings, and (4) permitting a correctional officer or correctional sergeant to request that a portion of their BWC recording be redacted.

Title 15

Amend: 3270.3

Filed 07/29/2024

Effective 07/29/2024

Agency Contact: Sarah Pollock (916) 445–2308

**PRIOR REGULATORY  
DECISIONS AND CCR  
CHANGES FILED WITH THE  
SECRETARY OF STATE**

A quarterly index of regulatory decisions by the Office of Administrative Law (OAL) is provided in the California Regulatory Notice Register in the volume published by the second Friday in January, April, July, and October following the end of the preceding quarter. For additional information on actions taken by OAL, please visit [oal.ca.gov](http://oal.ca.gov).