

FISH AND GAME CODE - FGC

DIVISION 6. FISH [5500 - 9101]

(Division 6 enacted by Stats. 1957, Ch. 456.)

PART 1. GENERALLY [5500 - 6956]

(Part 1 enacted by Stats. 1957, Ch. 456.)

CHAPTER 3. Dams, Conduits, and Screens [5900 - 6100]

(Chapter 3 enacted by Stats. 1957, Ch. 456.)

ARTICLE 1. General Provisions [5900 - 5904]

(Article 1 enacted by Stats. 1957, Ch. 456.)

5900.

As used in this chapter:

- (a) "Dam" includes all artificial obstructions.
- (b) "Conduit" includes pipe, millrace, ditch, flume, siphon, tunnel, canal, and any other conduit or diversion used for the purpose of taking or receiving water from any river, creek, stream, or lake.
- (c) "Owner" includes the United States (except that for the purpose of Sections 5901, 5931, 5933, and 5938, "owner" does not include the United States as to any dam in the condition the dam existed on September 15, 1945), the State, a person, political subdivision, or district (other than a fish and game district) owning, controlling or operating a dam or pipe.
- (d) "United States" means the United States of America, and in relation to any particular matter includes the officers, agents, employees, agencies, or instrumentalities authorized to act in relation thereto.

(Amended by Stats. 1961, Ch. 867.)

5901.

Except as otherwise provided in this code, it is unlawful to construct or maintain in any stream in Districts 1, $1\frac{3}{8}$, $1\frac{1}{2}$, $1\frac{7}{8}$, 2, $2\frac{1}{4}$, $2\frac{1}{2}$, $2\frac{3}{4}$, 3, $3\frac{1}{2}$, 4, $4\frac{1}{8}$, $4\frac{1}{2}$, $4\frac{3}{4}$, 11, 12, 13, 23, and 25, any device or contrivance that prevents, impedes, or tends to prevent or impede, the passing of fish up and down stream.

(Amended by Stats. 2005, Ch. 589, Sec. 2. Effective January 1, 2006.)

5902.

In including the United States within the scope of this chapter the Legislature declares that it understands that the law and policy of the United States with respect to the development of water resources, the reclamation of land from flood and overflow, and in all other respects is to comply with state laws respecting water. The provisions of

this chapter provide a procedure for the United States to comply with the provisions and policy of state law respecting its subject matter.

(Enacted by Stats. 1957, Ch. 456.)

5903.

The United States shall file with the commission pursuant to this chapter a separate application for each dam it proposes to construct or enlarge if an owner other than the United States would be required to file an application pursuant to Division 3 of the Water Code in order to construct or enlarge the same dam. The application shall be on forms provided by the department.

(Enacted by Stats. 1957, Ch. 456.)

5904.

The application of the United States shall give the following information:

- (a) The name and address of the owner.
- (b) The location, type, size, and height of the proposed dam and appurtenant works.
- (c) The storage capacity of the reservoir.
- (d) Such other pertinent information as the commission requires.
- (e) As accurately as may be readily obtained, the area of the drainage basin, rainfall, and stream flow records and flood flow records and estimates.
- (f) The purpose for which the impounded or diverted water is to be used.
- (g) Such other appropriate information as may be necessary in a given instance.

In instances wherein the physical conditions involved and the size of the dam are such as to render the above requirements as to drainage areas, rainfall, stream flow, and flood flow unnecessary, the commission may waive the requirements.

(Enacted by Stats. 1957, Ch. 456.)

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CHAPTER 3. Dams, Conduits, and Screens [5900 - 6100]

(Chapter 3 enacted by Stats. 1957, Ch. 456.)

ARTICLE 2. Dams and Obstructions [5930 - 5948]

(Article 2 enacted by Stats. 1957, Ch. 456.)

5930.

The department shall, from time to time, examine all dams in all rivers and streams in this State naturally frequented by fish.

(Enacted by Stats. 1957, Ch. 456.)

5931.

If, in the opinion of the commission, there is not free passage for fish over or around any dam, the department shall cause plans to be furnished for a suitable fishway, and order in writing the owner of the dam to provide the dam, within a specified time, with a durable and efficient fishway, of such form and capacity and in such location as shall be determined by the department. Such fishway shall be completed by the owner of the dam to the satisfaction of the department within the time specified.

(Enacted by Stats. 1957, Ch. 456.)

5932.

When all of the provisions of this article have been complied with, if in the opinion of the commission changed conditions make additional structures desirable for the free passage of fish, the department may make such additional structures and may expend such sums of money as it deems necessary for such additional construction, including the cost of insurance against any liability which the department may incur in connection with such structures.

(Enacted by Stats. 1957, Ch. 456.)

5933.

Whenever an application for approval of plans and specifications for a new dam in any stream in this State, or for the enlargement of any dam in any such stream, is filed with the Department of Water Resources, pursuant to Part 1 (commencing with Section 6000) of Division 3 of the Water Code, a copy of such application shall be filed by the applicant with the commission. If then the commission deems that the construction of a fishway over such a dam is necessary for the preservation and protection of fish, and that construction and operation of such fishway is practicable, it shall set a date for a hearing to be held within 90 days after filing of such application with the commission.

At such hearing the applicant shall be entitled to introduce evidence to show that construction of the fishway is not necessary or is not practicable, taking into consideration the height of the dam and the amount of water available.

If, after the hearing, the commission finds that the construction of the fishway is necessary and practicable it shall, within five days after such hearing, notify the applicant to that effect.

After notice from the commission that a fishway is required, it shall be unlawful to commence the construction of any new dam or the enlargement of any dam without first obtaining the written approval of the commission of the design for such a fishway.

(Amended by Stats. 1963, Ch. 304.)

5934.

The commission or any party may, in any hearing, cause the deposition of witnesses to be taken in the manner prescribed by law for depositions in civil actions in the superior courts of this state under Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure.

(Amended by Stats. 2004, Ch. 182, Sec. 37. Effective January 1, 2005. Operative July 1, 2005, by Sec. 64 of Ch. 182.)

5935.

The owner of any dam upon which a fishway has been provided shall keep the fishway in repair and open and free from obstructions to the passage of fish at all times.

(Enacted by Stats. 1957, Ch. 456.)

5936.

It is unlawful to wilfully destroy, injure, or obstruct any fishway.

(Enacted by Stats. 1957, Ch. 456.)

5937.

The owner of any dam shall allow sufficient water at all times to pass through a fishway, or in the absence of a fishway, allow sufficient water to pass over, around or through the dam, to keep in good condition any fish that may be planted or exist below the dam. During the minimum flow of water in any river or stream, permission may be granted by the department to the owner of any dam to allow sufficient water to pass through a culvert, waste gate, or over or around the dam, to keep in good condition any fish that may be planted or exist below the dam, when, in the judgment of the department, it is impracticable or detrimental to the owner to pass the water through the fishway.

(Enacted by Stats. 1957, Ch. 456.)

5938.

Whenever in the opinion of the commission it is impracticable, because of the height of any dam, or other conditions, to construct a fishway over or around the dam, the

commission may, in lieu of the fishway, order the owner of the dam completely to equip, within a specified time, on a site to be selected by the department, a hatchery, together with dwellings for help, traps for the taking of fish, and all other equipment necessary to operate a hatchery station, according to plans and specifications furnished by the department. After such hatchery has been constructed, the department shall operate it without further expense to the owner of the dam except as provided in Sections 5940 and 5941.

(Enacted by Stats. 1957, Ch. 456.)

5939.

The hatchery, traps, and other equipment necessary to operate a hatchery station shall not be of a size greater than necessary to supply the stream or river with a reasonable number of fish. The owner of the dam shall permit the department to locate the hatchery, dwellings, traps, and other equipment upon any of the land of the owner of the dam upon a site or sites to be mutually agreed upon by the department and the owner of the dam.

(Enacted by Stats. 1957, Ch. 456.)

5940.

If the owner of the dam generates electricity at the place of the dam, he shall furnish sufficient light, without charge, for the use of the hatchery.

(Enacted by Stats. 1957, Ch. 456.)

5941.

The owner shall permit the use of water, without charge, to operate the hatchery.

(Enacted by Stats. 1957, Ch. 456.)

5942.

The commission may, in lieu of a fishway, hatchery, dwelling, traps or other equipment necessary to operate a hatchery station, order the owner of the dam to plant, under the supervision of the department, the young of such fish as naturally frequent the waters of the stream or river, at such times, in such places, and in such numbers as the commission may order.

(Enacted by Stats. 1957, Ch. 456.)

5943.

(a) The owner of a dam shall accord to the public for the purpose of fishing, the right of access to the waters impounded by the dam during the open season for the taking of fish in the stream or river, subject to the regulations of the commission.

(b) Subdivision (a) does not apply to any impoundment of water by a dam that is wholly located on privately owned land that is primarily agricultural or residential in nature if the impounded waters are from a stream or river that is not naturally frequented by fish and if the dam does not prevent the free passage of fish over or around the dam. The Legislature finds and declares that this subdivision is intended to be declaratory of existing law.

(Amended by Stats. 1996, Ch. 273, Sec. 1. Effective January 1, 1997.)

5944.

The owner of a dam is not liable in damages to any person exercising the right to fish, who suffers any injury through coming in contact with, or tampering with, any of the property of the owner of the dam.

(Enacted by Stats. 1957, Ch. 456.)

5945.

The department may sell, at cost, to the owner of a dam, young fish ordered to be planted.

(Enacted by Stats. 1957, Ch. 456.)

5946.

The provisions of Section 5938 shall not be applicable to dams constructed in District 4 $\frac{1}{2}$ after September 9, 1953.

No permit or license to appropriate water in District 4 $\frac{1}{2}$ shall be issued by the State Water Rights Board after September 9, 1953, unless conditioned upon full compliance with Section 5937. Plans and specifications for any such dam shall not be approved by the Department of Water Resources unless adequate provision is made for full compliance with Section 5937.

(Amended by Stats. 1957, Ch. 1932.)

5947.

It is unlawful for the owner of a dam in District 4 $\frac{1}{2}$ to release water from the dam, or any facilities for the generation of hydroelectric energy operated in connection therewith, in varying flows in such a manner as to destroy fish life below such release.

(Enacted by Stats. 1957, Ch. 456.)

5948.

No person shall cause or having caused, permit to exist any log jam or debris accumulation or any other artificial barrier, except a dam for the storage or diversion of water, public bridges and approaches thereto, groins, jetties, seawalls, breakwaters, bulkheads, wharves and piers permitted by law, and debris from mining operations, in any stream in this State, which will prevent the passing of fish up and down stream or which is deleterious to fish as determined by the commission, subject to review by the courts.

(Amended by Stats. 1957, Ch. 2039.)

ARTICLE 3. Conduits and Screens: Diversions Over 250 Cubic Feet per Second [5980 - 5993]

(Article 3 enacted by Stats. 1957, Ch. 456.)

5980.

This article shall apply only to conduits described in Section 5987, and conduits with a maximum flow capacity over 250 cubic feet per second of water.

In classifying conduits it is recognized that those involving the passage of water through power devices and those of large size tend to destroy fish in a greater degree than conduits of smaller size or different type.

If this section is for any reason held to be unconstitutional, such decision shall not affect the validity of the remainder of this article.

The Legislature hereby declares that the persons owning conduits referred to in this section shall be subject to the provisions of this article.

(Enacted by Stats. 1957, Ch. 456.)

5981.

The department shall examine all conduits; and order the owner of a conduit to install, and it is the duty of such an owner to install, a screen on the conduit when, in the opinion of the department, a screen is necessary to prevent fish from passing into the conduit.

Except as provided in Sections 5987, 5988 and 5989, one-half of the expense of constructing or installing a screen shall be paid by the owner of a conduit and one-half by the department.

(Enacted by Stats. 1957, Ch. 456.)

5982.

An order to install a screen shall be in writing, and shall specify the type, size, mesh, material and location of the screen, the time within which the screen shall be installed, and an estimate of the expense of installing the screen.

(Enacted by Stats. 1957, Ch. 456.)

5983.

When an order is made to install a screen, the department shall pay the owner of the conduit upon whom the order is served one-half of the estimated expense of the construction or installation of the screen.

(Enacted by Stats. 1957, Ch. 456.)

5984.

If the expense of constructing or installing a screen exceeds the estimated expense the department shall, upon written notification by the owner of the conduit, inspect the screen, and pay to the owner one-half of the amount estimated to be necessary to complete the construction or installation of the screen.

(Enacted by Stats. 1957, Ch. 456.)

5985.

The owner of the conduit shall, within 10 days after completing the installation of the screen, return to the department any surplus money advanced by the department pursuant to this article.

(Enacted by Stats. 1957, Ch. 456.)

5986.

All money paid by the department to the owner of a conduit pursuant to this article shall be paid out of the Fish and Game Preservation Fund.

(Enacted by Stats. 1957, Ch. 456.)

5987.

The department shall not pay one-half of the expense of the construction and installation of any screen as provided in Sections 5981, 5983, and 5984 to any person engaged in producing, generating, transmitting, delivering, or furnishing electricity for light, heat or power.

If this section is for any reason held to be unconstitutional, the decision shall not affect the validity of Section 5981, 5983 or 5984, and the Legislature hereby declares

that the persons mentioned in this section shall be subject to the provisions of Sections 5981, 5983 and 5984.

(Enacted by Stats. 1957, Ch. 456.)

5988.

When a screen has been installed, the owner may, by written notice within 90 days after such installation, request the department to inspect the screen for the purpose of accepting it. Thereupon it is the duty of the department to inspect the screen, and if it has been installed in accordance with the order and plans and specifications agreed upon by the department and the owner as provided in Section 5992 or approved by the Department of Water Resources the department shall accept and approve the screen in writing. If, upon such inspection it appears that the screen has not been constructed and installed in accordance with such plans and specifications, the department shall, within 60 days after such inspection, notify the owner of any deviation from the order. Thereupon such deviation may be remedied within 90 days, and a further inspection requested.

(Enacted by Stats. 1957, Ch. 456.)

5989.

After acceptance, should the screen fail to function in an efficient manner, no changes in conditions affecting its operation having occurred subsequent to the acceptance of the screen, the owner shall not be required to install a new screen. However, the department may install another screen at the sole cost and expense of the department of a type, size, mesh, and at a location agreed upon by the department and the owner, or approved by the Department of Water Resources, as provided in Section 5992 of this code.

(Enacted by Stats. 1957, Ch. 456.)

5990.

It is unlawful for the owner of a conduit to refuse, fail, or neglect to install a screen in compliance with an order from the department or to permit the screen to be removed or taken out of place, except for repairs or cleaning while water is running in the conduit.

(Enacted by Stats. 1957, Ch. 456.)

5991.

In lieu of the department's ordering the owner to install a screen the department may, at its option, elect to construct and install the screen itself, in which event the type,

size, mesh, and location of the screen and the time within which it shall be installed shall be determined as provided by Section 5992 of this code.

When the department elects to construct and install a screen, one-half of the cost of construction and installation shall be paid by the owner.

The department may pay the entire cost of the construction and installation of a screen from the Fish and Game Preservation Fund, in which case it shall, upon completion of the screen, notify the owner of the amount of one-half of the cost, and the owner shall, within 30 days thereafter, remit that amount to the department.

(Enacted by Stats. 1957, Ch. 456.)

5992.

Any screen installed under any of the provisions of this article shall be reasonably adequate to prevent fish from passing into the conduit and not unnecessarily impede the flow of water or prevent the owner from diverting the amount of water he is legally entitled to divert.

The type, size, mesh, and location of the screen and the time within which it shall be installed shall be mutually agreed upon by the department and the owner of the conduit. In the event the department and the owner of the conduit cannot agree upon the type, size, mesh, and location of the screen and the time within which it shall be installed, such matters shall be submitted for determination to the Department of Water Resources whose decision thereon shall be final and conclusive.

If the owner and the department fail to agree upon the type, size, mesh, location, and time of installation of the screen within 60 days from the first submission of proposed plans and specifications by the department to the owner, either the department or the owner may submit such matters, in writing to the Department of Water Resources for final and conclusive decision, and it shall, within 60 days from such reference, render its decision in writing determining such matters.

The department shall maintain and keep the screen in repair, and shall quarterly notify the owner in writing of the cost thereof, and the owner shall within 30 days thereafter remit to the department an amount equal to one-half of such cost.

The owner shall operate and keep free from debris any screen installed, and shall quarterly notify the department in writing of the cost thereof, and the department shall within 30 days thereafter remit to the owner an amount equal to one-half of such cost.

(Enacted by Stats. 1957, Ch. 456.)

5993.

Before the installation of any screen under the provisions of this article, the department and the owner shall enter into an agreement defining the method of determining the cost of maintenance, repairs, operation, and keeping the screen free

of debris, which agreement shall provide that in the event either the department or the owner objects to such cost the matter shall be referred to the Director of General Services for his final and conclusive decision.

(Amended by Stats. 1965, Ch. 371.)

ARTICLE 4. Conduits and Screens: Diversions Less Than 250 Cubic Feet per Second [6020 - 6028]

(Article 4 enacted by Stats. 1957, Ch. 456.)

6020.

This article shall apply only to conduits with a maximum flow capacity of 250 cubic feet per second or less of water, other than those conduits described in Section 5987. If this section is for any reason held to be unconstitutional, such decision shall not affect the validity of Article 3 of this chapter and the Legislature hereby declares that the persons owning conduits referred to in this section shall be subject to the provisions of Article 3 of this chapter.

(Enacted by Stats. 1957, Ch. 456.)

6021.

The department shall examine new or existing conduits, and may install, maintain, repair, and replace fish screens, bypasses, or other devices to prevent the passage of fish through a conduit, when in the opinion of the department such a screen or device is practical and necessary. The owner of a conduit shall grant to the department the right of access to the conduit for the installation and maintenance of the screen, and shall provide the department with an easement for a site for the installation of the screen or device deemed suitable by the department. The owner shall also supply sufficient water for a bypass to carry fish stopped by the screen or device back to the channel from which they were diverted, and an easement for the bypass channel, but such easement shall not require the acquisition or leasing of additional lands by the owner. No water for a bypass shall be required if the channel from which the water is diverted is dry or incapable of supporting fish life below the point of diversion.

(Enacted by Stats. 1957, Ch. 456.)

6022.

Sufficient water for a bypass shall be not to exceed the following:

- (a) Diversions under three cubic feet per second capacity shall not be required to bypass more than 18 gallons per minute.
- (b) Diversions of three cubic feet per second or more, but under 10 cubic feet per second, shall not be required to bypass more than 30 gallons per minute.

- (c) Diversions of 10 cubic feet per second or more, but under 20 cubic feet per second, shall not be required to bypass more than 40 gallons per minute.
- (d) Diversions of 20 cubic feet per second or over shall not be required to bypass more than one-half of 1 percent of the capacity of the diversion.
- (e) Diversions built by the Government of the United States and requiring bypasses longer than one-quarter mile shall bypass such amount of water as is necessary to return fish to the permanent channel satisfactorily.

(Enacted by Stats. 1957, Ch. 456.)

6023.

The department shall serve written notice upon each owner of its intention to install a fish screen, and shall describe therein the distance downstream from the intake or in other manner the location of the screen, the access required, and the amount of water required for the bypass. The notice shall be served upon the owner in duplicate, and in such form that the original copy upon signature by the owner shall serve as an agreement to the installation of the screen or device under the terms therein, and shall require the owner to render such assistance, other than mechanical repair or replacement of parts, necessary to keep the screen or device in satisfactory operating condition. The hiring of additional labor shall not be required for such assistance.

(Enacted by Stats. 1957, Ch. 456.)

6024.

If the owner fails to sign and return the agreement granting the department the necessary rights for the installation of the screen or device within 60 days after its service on him, the department may install the screen as though the agreement had been signed unless a decision of the Department of Water Resources is requested. In the event the department and the owner of the conduit cannot agree upon the type, size, mesh, or location of the screen or device, the amount of water required for a bypass, or the time within which the screen or device shall be installed, the matter shall be submitted for determination to the Department of Water Resources, whose decision thereon shall be final and conclusive. The Department of Water Resources shall render its decision within 60 days after either the department or the owner has submitted the matter in writing and requested a decision.

(Enacted by Stats. 1957, Ch. 456.)

6025.

It is unlawful for the owner of a conduit to cause or permit a screen to be removed or taken out of place, except for repairs or cleaning, while water is running in the

conduit, or to operate the conduit with the bypass closed when the screen is operating as provided in this article.

(Enacted by Stats. 1957, Ch. 456.)

6026.

Any screen installed under this article shall be such as will be reasonably adequate to prevent fish from passing into the conduit and will not unnecessarily impede the flow of water or prevent the owner from diverting the amount of water he is legally entitled to divert.

(Enacted by Stats. 1957, Ch. 456.)

6027.

This article does not prevent the department from removing or permitting an owner to remove a screen or close a bypass during any part of the year when the department finds that such action will not endanger fish life.

(Enacted by Stats. 1957, Ch. 456.)

6028.

All money paid by the department to the owner of a conduit pursuant to this article shall be paid out of the Fish and Game Preservation Fund.

(Enacted by Stats. 1957, Ch. 456.)

ARTICLE 5. Diversion of Water From Streams [6100- 6100.]

(Article 5 added by Stats. 1971, Ch. 1016.)

6100.

- (a) Notwithstanding any provision of Article 3 (commencing with Section 5980) and Article 4 (commencing with Section 6020), on or after January 1, 1972, any new diversion of water from any stream having populations of salmon and steelhead that is determined by the department to be deleterious to salmon and steelhead shall be screened by the owner. The construction, operation, or maintenance costs of any screen required pursuant to this article shall be borne by the owner of the diversion.
- (b) The department within 30 days of providing written notice to the owner that the department has determined that the diversion is deleterious to salmon and steelhead pursuant to subdivision (a), or within the time determined by mutual written agreement, shall submit to the owner its proposals as to measures necessary to protect the salmon and steelhead. The department shall notify the owner that it shall

make onsite investigation and shall make any other investigation before it shall propose any measures necessary to protect fishlife.

(c) The department, or any agency of the state, shall provide the owner of the diversion any available information that is required by the owner in order to comply with the provisions of this article.

(d) The diversion shall not commence until the department has determined that measures necessary to protect fishlife have been incorporated into the plans and construction of the diversion.

(Amended by Stats. 2015, Ch. 2, Sec. 1. Effective March 27, 2015.)