

Second Supplement to Memorandum 2013-50

Fish and Game Law: Proposed Part 5 of Division 2 (Finance)

This supplement discusses a few matters relating to the content of Memorandum 2013-50 and its First Supplement.¹

Unless otherwise indicated, all statutory references in this supplement are to the existing Fish and Game Code, or to the provisions of the “proposed” Fish and Wildlife Code.

“WILDLIFE” DEFINED

Section 711.2(a) defines the term “wildlife” as follows:

For purposes of this code, unless the context otherwise requires, “wildlife” means and includes all wild animals, birds, plants, fish, amphibians, reptiles, and related ecological communities, including the habitat upon which the wildlife depends for its continued viability....

In Memorandum 2013-50, the staff recommended locating that section with the other code-wide definitions, in Division 1 of the proposed Fish and Wildlife Code.²

In response, the Department noted that there are other provisions in the existing code that define the term “wildlife,” and suggested that the Commission consider whether it is necessary to have more than one definition of the term.

The staff has identified three other sections that define the term “wildlife:”

- Section 716.3 (proposed Section 4335), which governs the provisions relating to the Wildlife Violator Compact.

1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission’s website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

2. Memorandum 2013-50, p. 3.

- Section 1348.3 (not yet analyzed), which relates to wildlife conservation easements. *This definition expressly incorporates the definition provided in Section 711.2.*
- Section 1800 (not yet analyzed), which governs a chapter on conservation of wildlife resources.

While it may be possible to formulate a single definition of “wildlife,” it isn’t strictly necessary to do so. The general definition in Section 711.2 expressly yields where “the context otherwise requires.” Thus, the specific definitions in Sections 716.3 and 1800 control over the general definition. Moreover, the definitions in Sections 716.3, 1348.3, and 1800 all have narrowly prescribed application, with no overlap. Thus, they do not conflict with one another. This means that there is no conflict between the differing definitions.

Given that, the staff makes the following recommendations:

- (1) Section 711.2 should be located with the other code-wide definition provisions.**
- (2) The definition of “wildlife” in Section 1348.3 should be deleted as redundant.**
- (3) When we eventually reach the point of analyzing Sections 716.3 and 1800, we should assess whether it is necessary to have different definitions of “wildlife” in those contexts.**

“PERSON” DEFINED

Section 711.2(b) defines the term “person” for purposes of the article in which it is contained. As indicated in Memorandum 2013-50, the only material difference between the definition of “person” provided in Section 711.2(b) and the code-wide definition of that term in Section 67 (proposed Section 260), is that the definition in Section 711.2(b) expressly includes government entities.

After analyzing the provisions that are governed by Section 711.2(b), the staff found only one provision that uses the term “person” in a way that is likely to include a government entity (Section 711.7). The staff therefore recommended that the application of Section 711.2(b) be narrowed, so that it only applies to Section 711.7.³

The Department expressed concern that narrowing the application of the definition in Section 711.2(b) could create an implication that government entities are intended to be excluded from the meaning of “person” in other provisions of

3. Memorandum 2013-50, pp. 4-6.

the code. This would be in tension with a court case holding that government entities are included within the meaning of “person” for the purposes of California Endangered Species Act (Sections 2050-2115.5).⁴

In light of that concern, the staff now recommends that the existing application of the definition of “person” in Section 711.2(b) be preserved without change. Doing so might entail a small amount of organizational redundancy, but that would seem to be a small problem compared to the possibility that organizational tidiness might interfere with the ongoing development of court interpretation of major substantive provisions of the code.

“ACCOUNT” V. “FUND”

Existing Section 13200 (proposed Section 2660) refers to money in the “Fish and Game Preservation *Account*.” No other provision of the Fish and Game Code refers to such an “account.” On the other hand, there are dozens of statutory references to “the Fish and Game Preservation *Fund*.”

The staff invites public comment on whether proposed Section 2660 should be revised to refer to the “Fish and Game Preservation Fund.”

REPEALED PROVISION

Proposed Section 2735 would continue existing Section 712.5. However, Section 712.5 was repealed in 2013.⁵ **Consequently, proposed Section 2735 should be deleted from the proposed law.**

Respectfully submitted,

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4. Exhibit to First Supplement to Memorandum 2013-50.

5. See 2013 Cal. Stat. ch. 356 (SB 96 (Committee on Budget and Fiscal Review)).