

Memorandum 2021-33

Fish and Game Law: Phase Two Public Comment

In this study, the Commission¹ has been directed by the Legislature to consider revision of the Fish and Game Code in order to make technical improvements to that law, without making any significant substantive change to the effect of the law.²

In December 2018 the Commission approved a tentative recommendation that would recodify the existing Fish and Game Code in a proposed new Fish and Wildlife Code.³

After releasing the tentative recommendation, the Commission decided to divide public comment into two phases. Phase One would consist of comments on changes to the text of existing law. Phase Two would address the proposed organizational changes. The Commission is actively working on Phase One issues.

The Commission has now received a “Phase Two” letter from Director Charlton Bonham of the Department of Fish and Wildlife. It is attached as an Exhibit.

Because the deadline for public comment on Phase Two is over six months away (January 1, 2022) the staff believes it would be premature to consider the letter now. Instead, we will present the letter again in early 2022, along with any other Phase Two comment that may have been received by then.

Respectfully submitted,

Brian Hebert
Executive Director

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. See 2012 Cal. Stat. res. ch.108 (ACR 98 (Wagner)).

3. See Memorandum 2018-67 and its First Supplement; Minutes (Dec. 2018), p. 10.



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Director's Office
P.O. Box 944209
Sacramento, CA 94244-2090
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



June 8, 2021

Chrystal Miller-O'Brien, Chairperson
California Law Revision Commission
c/o Brian Hebert, Executive Director
Via e-mail only to bhebert@clrc.ca.gov

Re: Fish and Game Code Reorganization

Dear Ms. Miller-O'Brien:

I would like to express my appreciation on behalf of the California Department of Fish and Wildlife (CDFW) for the California Law Revision Commission's (CLRC) efforts to make improvements to the Fish and Game Code (Code). As you know, CDFW is currently working with the CLRC on a third bill to effectuate hundreds of additional changes to the Code. While each of CLRC's efforts on behalf of CDFW have been significant, cumulatively they represent an unprecedented modernization of the Code and contribution to our understanding of CDFW's funding and mandates.

Your work to date has made a real and lasting difference. However, after completing the third bill covering hundreds of additional changes to the Code, I request that the CLRC not move forward with the remaining reorganization of the Code.

As you know, in 2012, the Legislature directed the CLRC to study "whether the Fish and Game Code and related statutory law should be revised to improve its organization, clarify its meaning, resolve inconsistencies, eliminate unnecessary or obsolete provisions, standardize terminology, clarify program authority and funding sources, and make other minor improvements, without making any significant substantive change to the effect of the law" (ACR 98 Wagner). Through past recommendations to the Legislature that ultimately became law and through numerous analyses related to each of the required categories, the CLRC has already responded to these legislative directives in a number of ways.

The Legislature specifically directed that the CLRC proposals do not make any significant substantive change to the effect of the law. This is the tipping point at which the disadvantages of proceeding with the 2018 Tentative Recommendation proposals for reorganization outweigh the benefits. While the proposed reorganization of the Code may not appear substantive on its face, the confusion that will result from wholesale reorganization will have a significant, substantive impact on CDFW's ability to enforce the Code.

Conserving California's Wildlife Since 1870

Chrystal Miller-O'Brien, Chairperson
California Law Revision Commission
c/o Brian Hebert, Executive Director
June 8, 2021
Page 2

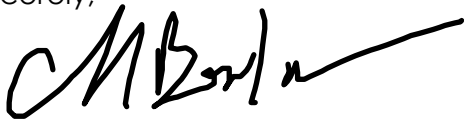
CDFW believes that going forward with the remaining reorganization of the Code risks confusion and error. As a result, the remaining CLRC proposals would extend beyond either the legislative limitation on the CLRC's work or application of the CLRC's own pragmatic test. Under that test, the CLRC would only propose changes that are plainly beneficial, would not present a significant risk of unintended consequences, and that are not likely to be controversial.

We have one more important task together to complete the third bill covering additional changes. This is a natural moment to conclude almost a decade of work, and by doing so, government will avoid a process that is likely to result in confusion at best, and at worst, a Code that is difficult to use and not supported by the department that is charged with its administration and enforcement. At the same time, CDFW will be able to benefit from CLRC's work product in the course of future bill analyses and will be able to integrate CLRC's remaining recommendations in a more incremental fashion.

The CLRC's work over the past nine years has contributed to significant improvements, including two clean-up bills already passed, a third in process, thousands of corresponding regulatory changes, and a series of reports on CDFW's funding and mandates. It is not an overstatement to say that CDFW will continue to reap benefits from the CLRC's work for many years.

We thank the CLRC for all the work it has accomplished on the department's behalf.

Sincerely,

A handwritten signature in black ink, appearing to read "C. H. Bonham", with a long horizontal flourish extending to the right.

Charlton H. Bonham
Director