

Memorandum 2013-50

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

The Commission¹ has provisionally decided to divide the proposed Fish and Wildlife Code along these lines:²

- Division 1. General Provisions
- Division 2. Administration
- Division 3. Law Enforcement
- Division 4. Inter-Jurisdictional Compacts
- Division 5. Freshwater Fisheries
- Division 6. Marine Fisheries
- Division 7. Wildlife Management
- Division 8. Nongame and Endangered Species
- Division 9. Planning and Environmental Review
- Division 10. Miscellaneous Provisions

Prior memoranda in this study presented drafts of proposed Division 1, Parts 1-4 of proposed Division 2, Division 3, and Division 4.³

This memorandum discusses the content of proposed Part 5 of Division 2, entitled "General Financial Provisions." Financial provisions that are specific to particular programs will be distributed throughout the code, near the programs to which they relate.⁴

The staff has taken a fairly conservative approach in preparing the attached draft. For the most part, the language used in the draft is drawn from existing law verbatim. Where changes have been made (either to conform to standard legislative drafting practices, update cross-references, or correct clear defects), the changes have been noted in the corresponding Comment (which will be included in any final recommendation). Courts have generally treated

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 Minutes (April 2013), p. 11.

3. Memorandum 2013-12; Memorandum 2013-13; Memorandum 2013-32.

4. See Minutes (Aug. 2013), p. 5.

Commission Comments as evidence of legislative intent, with regard to legislation enacted on the Commission's recommendation.

There are "Staff Notes" following some provisions of the proposed law. Some of the Staff Notes identify issues that will require future attention. Others solicit public comment in response to specific questions posed by the staff. Staff Notes are intended to be temporary and will not be included in any final recommendation.

Unless otherwise indicated, all statutory references in this memorandum are to the Fish and Game Code or to the "proposed" Fish and Wildlife Code.

CONTENT

The provisions in proposed Part 5 address the general financing of the Fish and Game Commission, the Department of Fish and Wildlife, county fish and game wardens, and their various operations.

The provisions in proposed Part 5 are mostly drawn from Division 10 (commencing with Section 13000) and Division 10.5 (commencing with Section 13220) of the Fish and Game Code.

Some provisions of Divisions 10 and 10.5 were *not* included in proposed Part 5, because they relate to program-specific finances or non-finance matters:

- Section 13005. Lifetime license sales
- Section 13007. Trout management
- Sections 13010-13014. Fish and Wildlife Pollution Account
- Section 13205. Big Game Management Account
- Sections 13230-13231. Oil pollution response expenditures

Proposed Part 5 also includes a few general finance provisions that were drawn from elsewhere in the Fish and Game Code (Sections 710, 710.5, 710.7, 711, 712, 712.5, 713, 859, 860, 1050(e), and 1050.8).

STRAY PROVISIONS

In working with the content of proposed Part 5, the staff came upon a few provisions that were embedded in that content, but should probably be located elsewhere. Those provisions are discussed below.

Misplaced Definitions

As noted above, some of the provisions in proposed Part 5 were drawn from an article of the Fish and Game Code that contains Sections 700-715. That article also contains Section 711.2, which provides as follows:

711.2. (a) 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 and “project” has the same meaning as defined in Section 21065 of the Public Resources Code.

(b) For purposes of this article, “person” includes any individual, firm, association, organization, partnership, business, trust, corporation, limited liability company, company, district, city, county, city and county, town, the state, and any of the agencies of those entities.

Those provisions were not included in proposed Part 5, for the reasons discussed below.

“Project” and “Wildlife”

By its terms, subdivision (a) provides definitions that apply to the entire code. Given that application, the provision should be located with other code-wide definitions in Chapter 2 (commencing with Section 100) of Division 1 of the proposed Fish and Wildlife Code. **Therefore, the staff recommends that the provision be divided into two sections and included in the proposed law as follows:**

§ 268. “Project”

268. “Project” has the meaning provided in Section 21065 of the Public Resources Code.

Comment. Section 268 restates the definition of “project” provided in former Section 711.2(a) without substantive change.

§ 325. “Wildlife”

325. “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.

Comment. Section 325 restates the definition of “wildlife” provided in former Section 711.2(a) without substantive change.

“Person”

Section 711.2(b) defines “person,” but only for the purposes of the article that contains it. This definition supplements an existing definition of “person” that governs the entire Fish and Game Code. See Section 67 (“‘Person’ means any natural person or any partnership, corporation, limited liability company, trust, or other type of association.”).

As can be seen, the main point of difference between the two definitions is that Section 711.2 expressly includes governmental entities. Consequently, the definition provided in Section 711.2 is only relevant for provisions that use “person” in a way that includes legal entities.

There are only a handful of provisions in the article governed by Section 711.2(b) that use the term “person.” All but one of those provisions appear to use the term only to refer to a natural person, thus:

701.5 The director or one or more of his designees may accept the office of director or alternate director of an entity established by a joint powers agreement providing for the establishment and conduct of an areawide waste management planning process in accordance with the provisions of Section 208 of the Federal Water Pollution Control Act. Such office of director or alternate director of a joint powers entity is deemed compatible with the office of director and the office or employment of such *persons* as the director may so designate to serve such an entity established by a joint powers agreement.

707. It is the duty of the attorney for the department to act as counsel in defense of any officer or deputy of the department in any suit for damages brought against the officer or deputy on account of injuries to *persons* or property alleged to have been received as a result of the negligence or misconduct of the officer or deputy occurring while the officer or deputy was performing his official duties.

714. (a) In addition to Section 3031, 3031.2, 7149, 7149.05, or 7149.2 and notwithstanding Section 3037, the department shall issue lifetime sportsman’s licenses pursuant to this section. A lifetime sportsman’s license authorizes the taking of birds, mammals, fish, reptiles, or amphibia anywhere in this state in accordance with law for purposes other than profit for the life of the *person* to whom issued unless revoked for a violation of this code or regulations adopted pursuant to this code. A lifetime sportsman’s license is not transferable. A lifetime sportsman’s license does not include any special tags, stamps, or other entitlements.

(b) A lifetime sportsman's license may be issued to residents, as follows:

(1) To a *person* 62 years of age or over upon payment of a base fee of seven hundred thirty dollars (\$730).

(2) To a *person* 40 years of age or over and less than 62 years of age upon payment of a base fee of one thousand eighty dollars (\$1,080).

(3) To a *person* 10 years of age or over and less than 40 years of age upon payment of a base fee of one thousand two hundred dollars (\$1,200).

(4) To a *person* less than 10 years of age upon payment of a base fee of seven hundred thirty dollars (\$730).

(c) This section does not require a *person* less than 16 years of age to obtain a license to take fish, reptiles, or amphibia for purposes other than profit or to obtain a license to take birds or mammals, except as required by law.

(d) This section does not exempt an applicant for a license from meeting other qualifications or requirements otherwise established by law for the privilege of sport hunting or sport fishing.

(e) Upon payment of a base fee of four hundred forty-five dollars (\$445), a *person* holding a lifetime hunting license or lifetime sportsman's license shall be issued annually one deer tag application pursuant to subdivision (a) of Section 4332 and five wild pig tags issued pursuant to Section 4654. Lifetime privileges issued pursuant to this subdivision are not transferable.

(f) Upon payment of a base fee of two hundred ten dollars (\$210), a *person* holding a lifetime hunting license or lifetime sportsman's license shall be entitled annually to the privileges afforded to a *person* holding a state duck stamp or validation issued pursuant to Section 3700 or 3700.1 and an upland game bird stamp or validation issued pursuant to Section 3682 or 3682.1. Lifetime privileges issued pursuant to this subdivision are not transferable.

(g) The base fees specified in this section are applicable commencing January 1, 2004, and shall be adjusted annually thereafter pursuant to Section 713.

(h) The commission shall adjust the amount of the fees specified in subdivision (g), as necessary, to fully recover, but not exceed, all reasonable administrative implementation costs of the department and the commission relating to those licenses.

See Sections 701.5, 707, 714 (emphasis added).

If the staff is correct in construing the use of "person" in those sections, then there is no need for the definition in Section 711.2(b) to apply to those sections.

The staff invites public comment on that issue.

However, there is one provision in the referenced article that appears to use the word “person” in a way that includes legal entities (including government entities). Section 711.7(b) provides:

If a court of competent jurisdiction finds that any provision of this section or the application thereof to any federal agency, *person*, or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

(Emphasis added.) **To avoid any unintended change in meaning, the definition of “person” in Section 711.2(b) should remain applicable to Section 711.7.** The staff will note this for future attention when the Commission turns to the material that includes Section 711.7(b) (which relates to wildlife trust resources).

Gift of Personal Property

Proposed Part 5 includes some provisions that relate to the disposition of funds donated to the department. See, e.g., proposed Section 2725 (existing Section 1225).

The staff had initially assumed that Section 1005.5 should also be included in proposed Part 5, along with the other provisions governing donations to the department. Section 1005.5 provides:

1005.5. Notwithstanding Section 11005 of the Government Code, the department may accept gifts of personal property if the donor is a county of the state and the gift is purchased with fine money derived from fish and game violations. The department shall notify the Department of Finance 30 days in advance of accepting these gifts.

However, after further reflection, the staff concluded that Section 1005.5 is not a finance provision. It does not govern gifts of *funds*. Instead it governs a gift of personal property that was *purchased* with specified funds. Presumably, this would include any type of equipment used by the department in carrying out its duties. If the staff is correctly construing the provision, it would be better located with other provisions relating to the general powers of the department, thus:

§ 1260. Gift of personal property

1260. Notwithstanding Section 11005 of the Government Code, the department may accept gifts of personal property if the donor is a county of the state and the gift is purchased with fine money derived from fish and wildlife violations. The department shall

notify the Department of Finance 30 days in advance of accepting these gifts.

Comment. Section 1260 continues former Section 1005.5 without change, except as indicated below:

The following nonsubstantive change was made:

- The words “fish and game” were replaced with “fish and wildlife.”

Is that placement acceptable?

PROPOSITION 26

At the Commission’s August 2013 meeting, Commissioner Boyer-Vine raised the issue of whether Proposition 26 (2010) would have any effect on a bill to recodify existing Fish and Game Code fee provisions. She indicated that Legislative Counsel staff were researching the matter and that she would share their findings with the Commission. See Minutes (Aug. 2013), p. 5.

Although the Commission should not make any final decisions on that issue until it learns the results of the pending research, there is one provisional decision that should perhaps be made. It is discussed below.

Prior to the approval of Proposition 26, Section 3 of Article XIII A of the California Constitution (hereafter “Section 3”) required 2/3 legislative approval of certain increases in state “taxes.” For the purposes of that provision, the term “tax” was held not to include some regulatory fees. See *Sinclair Paint v. State Board of Equalization*, 15 Cal. 4th 866 (1997).

Proposition 26 broadened the application of Section 3, by adding a definition of “tax” that includes some fees that were not formerly considered to be taxes. See Section 3(b).

As revised by Proposition 26, Section 3 applies to “[a]ny change in state statute which results in any taxpayer paying a higher tax....”

Suppose that an existing provision of the Fish and Game Code imposes a fee that would not have been considered a “tax” prior to Proposition 26, but would be considered a tax after Proposition 26. Would the recodification of that provision in the proposed Fish and Wildlife Code be a “change in state statute” that would trigger the application of Section 3? If so, the proposed recodification bill could be subject to the 2/3 supermajority requirement for passage. That could significantly complicate enactment of the proposed law.

However, it may be that recodification is not a “change in state statute.” Recall that proposed Section 20(a) (which is drawn from Government Code Section 9604) would provide:

A provision of this code, insofar as it is substantially the same as a previously existing provision relating to the same subject matter, shall be construed as a restatement and continuation thereof and not as a new enactment.

Thus, if we are simply restating and continuing an existing fee provision without substantive change, the recodified provision would not be a “new enactment.” Therefore, it would arguably not be a “change in state statute.” **As the staff cannot be sure that a court would be persuaded by that argument, it would be best not to rely on it.** (The Legislative Counsel research may provide further guidance on that issue.)

Instead, the Commission should probably avoid changing the substance of any existing fee provision. As noted above, Section 3 only applies if a change in statute “results in any taxpayer paying a higher tax.” So long as the proposed law does not alter the scope or amount of an existing fee, we should be able to avoid the supermajority requirement. In other words, it shouldn’t matter if recodification is a “statutory change,” so long as a recodified provision does not cause any taxpayer to pay a higher tax.

For that reason, the staff recommends a general rule that fee provisions be preserved verbatim, to avoid any argument that recodification has changed the amount of the fee or the scope of the duty to pay the fee. There may be circumstances where it would make sense to deviate from that rule, but those situations could be analyzed separately.

CONCLUSION

The attached draft represents an initial attempt to reorganize the Fish and Game Code provisions that relate to finances generally.

There may be other provisions that should be located with this material, but are scattered elsewhere in the code. Over the remainder of this study, if the staff finds any provision that should be located with the general licensing provisions, the staff will prepare a memorandum addressing the issue.

The staff invites public comment on any of the matters discussed in this memorandum. Particular attention should be paid to questions posed in Staff Notes in the attached draft.

In addition, the staff would appreciate comment on whether any of the provisions included in the attached draft present the kinds of problems with consistency, redundancy, or ambiguity as to program authority or funding sources that the Commission has been tasked with addressing. See 2012 Cal. Stat. res. ch. 108. Because the Commission is new to fish and game law, it is important that subject matter experts assist in identifying such problems as the Commission proceeds through the code.

Respectfully submitted,

Brian Hebert
Executive Director

FISH AND WILDLIFE CODE

Staff Note: This is a preliminary staff draft of a proposed reorganization of specified provisions of the Fish and Game Code.

Statutory cross-references that cannot yet be adjusted (because the referenced provisions have not yet been reorganized) are set out in boldface type, for later attention.

A draft of an official Commission “Comment” follows each proposed section. Such Comments will be included in any final recommendation. They serve to indicate the source of each section and to describe how it compares with prior law. Courts have routinely held that the Commission’s Comments are evidence of legislative intent with regard to any legislation that implements a Commission recommendation. For guidance on the terminology used in Commission Comments, see the Comment following proposed Section 20 (attached to Memorandum 2013-12).

There is a “disposition table” at the end of this document. It summarizes, in tabular form, the disposition of every provision that has been included in this draft. If an existing provision would be repealed as unnecessary, the table indicates that provision as “omitted.”

Some provisions of this draft may be followed by a “Staff Note.” Staff Notes are intended to be temporary and will not be part of the Commission’s final recommendation. They serve to flag issues requiring special attention or treatment.

The Commission welcomes public comment on any issue relating to the content of this draft. The Commission is particularly interested in comments on any of the following matters:

- (1) Responses to any questions posed in “Staff Notes.”
- (2) Any inconsistency, obsolescence, ambiguity, or problems relating to program authority and funding, whether *within* the provisions of this draft or *between* the provisions of this draft and other provisions of law.
- (3) Provisions that should have been included in this draft but were not (or provisions included in this draft that should have been located elsewhere).
- (4) Technical drafting errors.

Comments should be directed to Brian Hebert at bhebert@clrc.ca.gov.

DIVISION 2. ADMINISTRATION	1
PART 5. GENERAL FINANCIAL PROVISIONS	1
TITLE 1. STATE	1
CHAPTER 1. LEGISLATIVE FINDINGS, DECLARATIONS, AND INTENT	1
§ 2600. Legislative findings and declarations of 1978 (as amended in 2006)	1
§ 2605. Legislative findings and declarations of 1990	1
§ 2610. Legislative findings and declarations of 1992	2
§ 2615. Statement of legislative intent regarding funding	3
§ 2620. Statement of legislative intent regarding nongame program funding	4
CHAPTER 2. ACCOUNTING	4
§ 2650. Fish and Game Preservation Fund	4
§ 2655. Fund condition statement	5
§ 2660. Accounting method	5
§ 2665. Program descriptions	5
§ 2670. Payroll and other costs	6
§ 2675. Basic principle of cost accounting system	6
CHAPTER 3. REVENUE	6
Article 1. Deposit of Revenue	6
§ 2700. Default deposit rule	6
§ 2705. Deposit of license revenue	6
§ 2710. Deposit and apportionment of fines and forfeitures	6
Article 2. Gifts, Grants, and Donations	7

§ 2725. Deposit of gifts and bequests	7
§ 2730. Funding agreements	7
§ 2735. Special license plate funds	8
§ 2740. Grants and donations for financing of K9 program	8
§ 2745. Commemorative license	8
§ 2750. Wildlife officer stamp	9
Article 3. Fees	10
§ 2775. Department authority to set or change fees	10
§ 2780. Inflation based changes in fees	10
CHAPTER 4. EXPENDITURES	11
§ 2800. Expenditures generally	11
§ 2805. Secret witness program	11
§ 2810. Loans to General Fund	12
TITLE 2. COUNTIES	12
§ 2850. County fish and wildlife propagation fund	12
§ 2855. Agreement between counties	13
§ 2860. Expenditures subject to Gov't Code § 29000 <i>et seq</i>	13
§ 2865. Authorized expenditures	14
§ 2870. Audit	15
DISPOSITION OF FORMER LAW	16

1

DIVISION 2. ADMINISTRATION

2

PART 5. GENERAL FINANCIAL PROVISIONS

3

TITLE 1. STATE

4

CHAPTER 1. LEGISLATIVE FINDINGS,

5

DECLARATIONS, AND INTENT

6

§ 2600. Legislative findings and declarations of 1978 (as amended in 2006)

7

2600. The Legislature finds and declares that the department has in the past not been adequately funded to meet its mandates. The principal causes have been the fixed nature of the department's revenues in contrast with the rising costs resulting from inflation, the increased burden on the department to carry out its public trust responsibilities, and additional responsibilities placed on the department by the Legislature. This lack of funding has prevented proper planning and personnel allocation. The lack of funding has required the department to restrict warden enforcement and to defer essential management of lands acquired for wildlife conservation. The lack of funding for fish and wildlife conservation activities other than sport and commercial fishing and hunting activities has resulted in inadequate wildlife and habitat conservation and wildlife protection programs.

8

9

10

11

12

13

14

15

16

17

18

Comment. Section 2600 continues former Section 710 without change, except as indicated below.

19

20

The following nonsubstantive change was made:

21

- The term "manpower" was replaced with "personnel."

22

§ 2605. Legislative findings and declarations of 1990

23

2605. (a) The Legislature finds and declares that the department continues to be inadequately funded to meet its mandates. While revenues have been declining, the department's responsibilities have increased in order to protect public trust resources in the face of increasing population and resource management demands. The department's revenues have been limited due to a failure to maximize user fees and inadequate non-fee-related funding. The limited department revenues have resulted in the inability of the department to effectively provide all of the programs and activities required under this code and to manage the wildlife resources held in trust by the department for the people of the state.

24

25

26

27

28

29

30

31

32

(b) The Legislature further finds and declares that the department has been largely supported by fees paid by those who utilize the resources held in trust by the department. It is the intent of the Legislature that, to the extent feasible, the department should continue to be funded by user fees. All fees collected by the department, including, but not limited to, recreational hunting and fishing licenses,

33

34

35

36

1 landing taxes, commercial licenses, permits and entitlements, and other fees for
2 use of the resources regulated or managed by the department, are user fees. To the
3 extent that these fees are appropriated through the Budget Act for the purposes for
4 which they are collected to provide services to the people of the State of
5 California, these user fees are not subject to Article XIII B of the California
6 Constitution.

7 (c) The Legislature further finds and declares that user fees are not sufficient to
8 fund all of the department's mandates. To fulfill its mandates, the department must
9 secure a significant increase in reliable funding, in addition to user fees.

10 **Comment.** Section 2605 continues former Section 710.5 without change, except as indicated
11 below.

12 The following nonsubstantive change was made:

- 13 • Subdivisions were added.

14 **§ 2610. Legislative findings and declarations of 1992**

15 2610. (a) The Legislature finds and declares all of the following:

16 (1) The department continues to face serious funding instability due to revenue
17 declines from traditional user fees and taxes and the addition of new and expanded
18 program responsibilities.

19 (2) Historically, the recreational and commercial fishing industry has funded
20 much of the department's marine fisheries activities.

21 (3) As the state's population grows and development changes historic land uses,
22 fish and wildlife continue to be depleted, necessitating a significant portion of the
23 department's activities to be directed toward protecting fish and wildlife for the
24 benefit of the people of the state.

25 (b) It is the intent of the Legislature to extend the current user-based funding
26 system by allocating a portion of the marine resource protection costs to those who
27 use and benefit from recreational and commercial use of the marine resources.

28 (c) It is the Legislature's intent that, notwithstanding Section 2615, the
29 department shall cooperate with the Legislature, recreational users, conservation
30 organizations, the commercial fishing industry, and other interested parties to
31 identify and propose new alternative sources of revenue to fund the department's
32 necessary marine conservation, restoration, and resources management, and
33 protection responsibilities.

34 (d) It is further the intent of the Legislature to identify new funding sources and
35 to secure those sources to adequately fund the department's activities directed at
36 protecting and managing wildlife for the people of the state.

37 **Comment.** Section 2610 continues former Section 710.7 without change, except as indicated
38 below.

39 The following nonsubstantive change was made:

- 40 • A cross-reference to former Section 711 was revised to refer to the provision that
41 continues that section.

1 § 2615. Statement of legislative intent regarding funding

2 2615. (a) It is the intent of the Legislature to ensure adequate funding from
3 appropriate sources for the department. To this end, the Legislature finds and
4 declares that:

5 (1) The costs of nongame fish and wildlife programs shall be provided annually
6 in the Budget Act by appropriating money from the General Fund, through
7 nongame user fees, and sources other than the Fish and Game Preservation Fund
8 to the department for these purposes.

9 (2) The costs of commercial fishing programs shall be provided out of revenues
10 from commercial fishing taxes, license fees, and other revenues, from
11 reimbursements and federal funds received for commercial fishing programs, and
12 other funds appropriated by the Legislature for this purpose.

13 (3) The costs of hunting and sportfishing programs shall be provided out of
14 hunting and sportfishing revenues and reimbursements and federal funds received
15 for hunting and sportfishing programs, and other funds appropriated by the
16 Legislature for this purpose. These revenues, reimbursements, and federal funds
17 shall not be used to support commercial fishing programs, free hunting and fishing
18 license programs, or nongame fish and wildlife programs.

19 (4) The costs of managing lands managed by the department and the costs of
20 wildlife management programs shall be supplemented out of revenues in the
21 Native Species Conservation and Enhancement Account in the Fish and Game
22 Preservation Fund.

23 (5) Hunting, sportfishing, and sport ocean fishing license fees shall be adjusted
24 annually to an amount equal to that computed pursuant to Section 2780. However,
25 a substantial increase in the aggregate of hunting and sportfishing programs shall
26 be reflected by appropriate amendments to the sections of this code that establish
27 the base sport license fee levels. The inflationary index provided in Section 2780
28 shall not be used to accommodate a substantial increase in the aggregate of
29 hunting and sportfishing programs.

30 (6) The costs of a conservation and mitigation banking program, including, but
31 not limited to, costs incurred by the department during its adoption of guidelines
32 for, and the review, approval, establishment, monitoring, and oversight of, banks,
33 shall be reimbursed from revenues of conservation and mitigation bank application
34 fees imposed pursuant to **Sections 1798.5, 1798.6, and 1799.**

35 (b) The director and the Secretary of the Natural Resources Agency, with the
36 department's annual budget submittal to the Legislature, shall submit a report on
37 the fund condition, including the expenditures and revenue, for all accounts and
38 subaccounts within the Fish and Game Preservation Fund. The department shall
39 also update its cost allocation plan to reflect the costs of program activities.

40 (c) For purposes of this section, "substantial increase" means an increase in
41 excess of 5 percent of the Fish and Game Preservation Fund portion of the
42 department's current year support budget, excluding cost-of-living increases
43 provided for salaries, staff benefits, and operating expenses.

1 **Comment.** Section 2615 continues former Section 711 without change, except as indicated
2 below.

3 The following nonsubstantive changes were made:

- 4 • Cross-references to former Section 713 were revised to refer to the provision that
5 continues that section.
- 6 • In subdivision (c), the reference to “this article” was changed to “this section.”

7 **Staff Notes.** (1) Subdivision (b) is not a statement of legislative intent. It is a substantive
8 provision. Moreover, it appears to duplicate the substance of Section 13001.5, with less detail.
9 Does Section 711(b) serve any purpose, or can it be deleted?

10 (2) Subdivision (c) provides a definition for the purposes of “this article.” But Section 711 is
11 the only section in the referenced article that uses the defined term. The provision’s scope of
12 application has been narrowed accordingly.

13 **§ 2620. Statement of legislative intent regarding nongame program funding**

14 2620. (a) It is the intent of the Legislature that the Department of Finance shall
15 include in the Governor’s Budget sufficient moneys from the General Fund and
16 sources other than the Fish and Game Preservation Fund to pay the costs of the
17 department’s nongame programs, including those necessary for the protection and
18 enhancement of California’s nongame fish and wildlife and their habitat, the free
19 hunting and fishing license programs, and special repairs and capital outlay.

20 (b) It is the intent of the Legislature that the Department of Finance shall not
21 include in the Governor’s Budget any appropriation from the Fish and Game
22 Preservation Fund for any program or project which is not expressly found to be
23 an activity relating to the protection or propagation of fish and game, except to the
24 extent that moneys have been deposited in that fund from collections under a law
25 which is not related to the protection or propagation of fish and game.

26 (c) Any study relating to funding of programs administered or conducted by the
27 department shall include express findings of whether the program is related to the
28 protection or propagation of fish and game and shall describe the relationship.

29 **Comment.** Section 2620 continues former Section 712 without change except as indicated
30 below.

31 The following nonsubstantive change was made:

- 32 • Subdivisions were added.

33 **CHAPTER 2. ACCOUNTING**

34 **§ 2650. Fish and Game Preservation Fund**

35 2650. The Fish and Game Preservation Fund in the State Treasury is continued
36 in existence.

37 **Comment.** Section 2650 continues former Section 13000 without change.

38 **Staff Note.** The Department of Fish and Game was recently renamed the Department of Fish
39 and Wildlife. Consistent with that change, the proposed Fish and Wildlife Code generally uses the
40 term “fish and wildlife” in place of “fish and game.” For that reason, it would make sense to
41 revise references to the “Fish and Game Preservation Fund” to instead refer to the “Fish and

1 Wildlife Preservation Fund.” However, it is possible that such a change would entail
2 administrative costs relating to accounting systems operated by the department and the State
3 Controller. **The staff invites public comment on whether the costs associated with renaming
4 the fund would outweigh the benefit of doing so.**

5 **§ 2655. Fund condition statement**

6 2655. (a) The department shall prepare annually, for inclusion in the Governor’s
7 Budget, a fund condition statement for the Fish and Game Preservation Fund that
8 displays both of the following:

9 (1) Information relating to the total amounts of revenues and expenditures with
10 regard to the moneys in the fund that are deposited in an account or subaccount in
11 the fund.

12 (2) Information relating to revenues and expenditures with regard to all moneys
13 in the fund that are not deposited in an account or subaccount in the fund.

14 (b) For the purposes of subdivision (a), the department shall prepare the fund
15 condition statement in a manner that is similar to the fund condition statement
16 relating to the Fish and Game Preservation Fund included in the 2003-04
17 Governor’s Budget.

18 (c) The department shall prepare, for posting on its Internet Web site on or
19 before January 10, of each year, a fund condition statement for each account or
20 subaccount in the fund.

21 **Comment.** Section 2655 continues former Section 13001.5 without change.

22 **§ 2660. Accounting method**

23 2660. The department shall account for revenues and expenditures of the money
24 in the Fish and Game Preservation Account in a manner consistent with the laws
25 and applicable policies governing state departments generally for each activity or
26 program in which the department is engaged.

27 **Comment.** Section 2660 continues former Section 13200 without change.

28 **§ 2665. Program descriptions**

29 2665. In establishing the appropriate programs or activities for this system, the
30 department shall consider the following programs or activities:

31 (a) Freshwater fisheries activities.

32 (b) Marine fisheries activities.

33 (c) Wildlife management activities.

34 (d) Planning and environmental review.

35 (e) Law enforcement.

36 (f) Nongame and endangered species.

37 (g) General administration.

38 **Comment.** Section 2665 continues former Section 13201 without change.

1 § 2670. Payroll and other costs

2 2670. (a) Payroll and other costs that are directly identifiable with specific
3 programs or activities shall be charged directly to accounts maintained for the
4 appropriate programs or activities.

5 (b) Payroll and other costs that are not identifiable with specific programs or
6 activities shall be allocated on an equitable basis to program or activity cost
7 accounts.

8 **Comment.** Section 2670 continues former Section 13202 without change, except as indicated
9 below.

10 The following nonsubstantive change was made:

- 11 • Subdivisions were added.

12 § 2675. Basic principle of cost accounting system

13 2675. The basic principle of this cost accounting system shall be that the total
14 cost of operation of the department shall be accounted for by accounting for the
15 cost of each activity or program in which it is engaged.

16 **Comment.** Section 2675 continues former Section 13203 without change.

17  **Staff Note.** Section 13203 refers to “*this* cost accounting system,” without clearly identifying
18 the pronoun’s antecedent. In order to resolve that ambiguity, it would be helpful to know whether
19 the section is referring to Section 13200, 13202, both of them, or something else. **The staff**
20 **invites comment on that issue.**

21 CHAPTER 3. REVENUE

22 Article 1. Deposit of Revenue

23 § 2700. Default deposit rule

24 2700. Unless otherwise provided, all money collected under the provisions of
25 this code and of any other law relating to the protection and preservation of birds,
26 mammals, fish, reptiles, or amphibia shall be paid into the State Treasury to the
27 credit of the Fish and Game Preservation Fund.

28 **Comment.** Section 2700 continues former Section 13001(a) without change.

29 § 2705. Deposit of license revenue

30 2705. The department shall pay into the State Treasury at least once a month the
31 money received by it from the sale of licenses issued under the provisions of this
32 code.

33 **Comment.** Section 2705 continues former Section 13002 without change.

34 § 2710. Deposit and apportionment of fines and forfeitures

35 2710. (a) Unless otherwise provided by law, a fine or forfeiture imposed or
36 collected in any court of this state for a violation of a provision of this code, a
37 regulation made pursuant to this code, or any other law providing for the

1 protection or preservation of birds, mammals, fish, reptiles, or amphibia, shall be
2 deposited as soon as practicable after the receipt thereof with the county treasurer
3 of the county in which the court is situated.

4 (b) Amounts deposited pursuant to subdivision (a) shall be paid at least once a
5 month as follows:

6 (1) One-half to the Treasurer, by warrant of the county auditor drawn upon the
7 requisition of the clerk or judge of the court, for deposit in the Fish and Game
8 Preservation Fund in the State Treasury on order of the Controller. At the time of
9 transmittal, the county auditor shall forward to the Controller, on a form or forms
10 that the Controller may prescribe, a record of the imposition, collection, and
11 payment of the fines or forfeitures. The department may employ legal counsel and
12 may expend these funds to pay the costs of legal actions brought in the name of
13 the people relating to the enforcement of this code by a district attorney, city
14 attorney, or the department, as appropriate.

15 (2) One-half to the county in which the offense was committed.

16 **Comment.** Section 2710 continues former Section 13003 without change, except as indicated
17 below.

18 The following nonsubstantive changes were made:

- 19 • The first sentence was designated as subdivision (a). Conforming changes in
20 numbering were made in the remainder of the section.
- 21 • The first sentence was restated to use the singular throughout.
- 22 • In the introductory clause of subdivision (b), “pursuant thereto” was replaced with
23 “pursuant to subdivision (a).”
- 24 • Paragraph (b)(1) was restated to avoid use of “such” throughout.

25 Article 2. Gifts, Grants, and Donations

26 § 2725. Deposit of gifts and bequests

27 2725. All moneys collected or received from gifts or bequests, or from
28 municipal or county appropriations or donations for purposes relating to
29 conservation programs, projects, and activities by the department shall be
30 deposited in the State Treasury to the credit of the Fish and Game Preservation
31 Fund. All moneys deposited pursuant to this section shall be used for purposes
32 relating to conservation programs, projects, and activities by the department.

33 **Comment.** Section 2725 continues former Section 1225 without change.

34 § 2730. Funding agreements

35 2730. The department may enter into one or more agreements to accept funds
36 from any person, nonprofit organization, or other public or private entity for
37 purposes relating to conservation programs, projects, and activities by the
38 department. Any funds received pursuant to this section shall be deposited in the
39 Fish and Game Preservation Fund. The funds received shall supplement existing
40 resources for purposes relating to conservation programs, projects, and activities
41 by the department.

1 **Comment.** Section 2730 continues former Section 1226(a) without change.

2 **§ 2735. Special license plate funds**

3 2735. (a) Commencing July 1, 2005, any moneys appropriated from the Public
4 Resources Account in the Cigarette and Tobacco Products Surtax Fund for
5 programs to protect, restore, enhance, or maintain waterfowl habitat pursuant to
6 subparagraph (A) of paragraph (5) of subdivision (b) of Section 30122 of the
7 Revenue and Taxation Code, shall be transferred to the department for expenditure
8 for those same purposes.

9 (b) Commencing July 1, 2005, any moneys appropriated to the department from
10 the California Environmental License Plate Fund described in Section 21191 of
11 the Public Resources Code, in an amount not to exceed the amount transferred to
12 the department pursuant to subdivision (a), shall be transferred to the Department
13 of Parks and Recreation for expenditure for the exclusive trust purposes described
14 in Section 21190 of the Public Resources Code.

15 **Comment.** Section 2735 continues former Section 712.5 without change, except as indicated
16 below.

17 The following nonsubstantive change was made:

- 18 • The words “of the Public Resources Code” were added to the end of subdivision (b).

19 **§ 2740. Grants and donations for financing of K9 program**

20 2740. Notwithstanding Section 11005 of the Government Code, the department
21 may seek and accept grants and donations from private and public organizations
22 and agencies for the purpose of administering the Canine (K9) Program. The
23 acceptance of one-time donations valued over fifteen thousand dollars (\$15,000)
24 shall require approval of the Department of Finance.

25 **Comment.** Section 2740 continues former Section 859 without change.

26 **§ 2745. Commemorative license**

27 2745. (a) The department may issue collectible, commemorative licenses to any
28 person for purposes of promoting and supporting licensed hunting, fishing, and
29 resource conservation, subject to all of the following:

30 (1) A commemorative license may be designed and produced as the department
31 may determine and shall be clearly marked and identified as a commemorative
32 license, rendering it invalid for the take of any mammal, bird, fish, reptile, or
33 amphibian.

34 (2) A commemorative license shall not confer any rights, privileges, or other
35 entitlements to any person purchasing or in possession of the license.

36 (3) Subdivisions (a) and (b) of Section 2075, subdivision (a) of Section 2250,
37 **Article 2 (commencing with Section 3031) of Chapter 1 of Part 1 of Division 4,**
38 **and Article 3 (commencing with Section 7145) of Chapter 1 of Part 2 of**
39 **Division 6** do not apply to the purchase of a commemorative license. A

1 commemorative license shall not qualify as evidence required in **subdivision (a)**
2 **of Section 3050.**

3 (b) All funds derived from the sale of commemorative licenses shall be
4 deposited in the Fish and Game Preservation Fund.

5 **Comment.** Section 2745 continues former Section 1050.8 without change, except as indicated
6 below.

7 The following nonsubstantive changes were made:

- 8 • Paragraph (a)(2) was revised to replace the words “such a” with “the.”
- 9 • A cross-reference to former Section 1052(a) was revised to refer to the provision that
10 continues that section.
- 11 • A cross-reference to former Section 1053 was revised to refer to the provision that
12 continues that section.

13 **§ 2750. Wildlife officer stamp**

14 2750. (a) The department may offer for sale a wildlife officer stamp to be
15 designed and produced as the department may determine. The wildlife officer
16 stamp may be purchased on a voluntary basis from the department or a licensed
17 agent authorized pursuant to Section 2300 for a donation of not less than five
18 dollars (\$5). The department may also design an electronic version of the wildlife
19 officer stamp to be offered through the Automated License Data System. There
20 shall be no indication on any license or permit of the purchase of a wildlife officer
21 stamp.

22 (b) All revenues from sales under this section shall be deposited in the Fish and
23 Game Warden Stamp Account which is hereby created in the Fish and Game
24 Preservation Fund to permit separate accountability for the receipt and expenditure
25 of these funds. Funds deposited in the Fish and Game Warden Stamp Account
26 shall be used, upon appropriation, to support the department’s wildlife officers.

27 **Comment.** Section 2750 continues former Section 860 without change, except as indicated
28 below.

29 The following nonsubstantive changes were made:

- 30 • Subdivisions were added.
- 31 • The terms “fish and game warden” and “warden” were replaced with “wildlife officer.”
- 32 • The words “shall used” were replaced with “shall be used.”
- 33 • A cross-reference to former Section 1055.1 was revised to refer to the provision that
34 continues that section.

35 **Staff Notes. (1)** The Department of Fish and Game was recently renamed the Department of
36 Fish and Wildlife. Consistent with that change, the proposed Fish and Wildlife Code generally
37 uses the term “fish and wildlife” in place of “fish and game.” Similarly, references to “fish and
38 game wardens” have been replaced with references to “wildlife officers.” For those reasons, it
39 would make sense to revise references to the “Fish and Game Warden Stamp Account” to instead
40 refer to the “Wildlife Officer Stamp Account.” However, it is possible that such a change would
41 entail administrative costs relating to accounting systems operated by the department and the
42 State Controller. **The staff invites public comment on whether the costs associated with**
43 **renaming the account would outweigh the benefit of doing so.**

44 (2) Section 860 authorizes the sale of stamps by a license agent authorized “pursuant to Section
45 1055.1.” By its terms, Section 1055.1 only applies to license agents who operate through the
46 Automated License Data System. That appears to be too narrow of a reference. It seems plain that

1 the section is also intended to apply to non-ALDS license agents. For that reason, proposed
2 Section 2750 would broaden the cross-reference to also include the provisions of Section 1055
3 that authorize the other types of license agents. **Would that cause any problems?**

4 Article 3. Fees

5 **§ 2775. Department authority to set or change fees**

6 2775. (a) The department may, by regulation, establish fees and adjust
7 statutorily imposed fees for the filings, permits, determinations, or other
8 department actions described in **Sections 711.4, 1002, and 1609.**

9 (b) The department may change the amount of a fee in accordance with Section
10 2210.

11 (c) Fees established by the department shall be in an amount sufficient to
12 recover all reasonable administrative and implementation costs of the department
13 relating to the program with regard to which the fee is paid. The department may
14 establish a fee structure that provides for the phasing in of new fees leading up to
15 full cost recovery for the department, provided that full cost recovery is achieved
16 within five years of the establishment of the fee.

17 **Comment.** Section 2775 restates the substance of former Section 1050(e), except as indicated
18 below.

19 The following nonsubstantive change was made:

- 20 • A cross-reference to former Section 713 was revised to refer to the provision that
21 continues that section.

22 **§ 2780. Inflation based changes in fees**

23 2780. (a) The changes in the Implicit Price Deflator for State and Local
24 Government Purchases of Goods and Services, as published by the United States
25 Department of Commerce, shall be used as the index to determine an annual rate
26 of increase or decrease in the fees for licenses, stamps, permits, tags, or other
27 entitlements issued by the department.

28 (b)(1) The department shall determine the change in the Implicit Price Deflator
29 for State and Local Government Purchases of Goods and Services, as published by
30 the United States Department of Commerce, for the quarter ending March 31 of
31 the current year compared to the quarter ending March 31 of the previous year.
32 The relative amount of the change shall be multiplied by the current fee for each
33 license, stamp, permit, tag, or other entitlement issued by the department.

34 (2) The product shall be rounded to the nearest twenty-five cents (\$0.25), and
35 the resulting amount shall be added to the fee for the current year. The resulting
36 amount shall be the fee for the license year beginning on or after January 1 of the
37 next succeeding calendar year for the license, stamp, permit, tag, or other
38 entitlement that is adjusted under this section.

39 (c) Notwithstanding any other provision of law, the department may recalculate
40 the current fees charged for each license, stamp, permit, tag, or other entitlement
41 issued by the department, to determine that all appropriate indexing has been

1 included in the current fees. This section shall apply to all licenses, stamps,
2 permits, tags, or other entitlements, that have not been increased each year since
3 the base year of the 1985-86 fiscal year.

4 (d) The commission, with respect to any license, stamp, permit, tag, or other
5 entitlement issued by the commission shall comply with subdivisions (a) to (c),
6 inclusive.

7 (e) The calculations provided for in this section shall be reported to the
8 Legislature with the Governor's Budget Bill.

9 (f) The Legislature finds that all revenues generated by fees for licenses, stamps,
10 permits, tags, and other entitlements, computed under this section and used for the
11 purposes for which they were imposed, are not subject to Article XIII B of the
12 California Constitution.

13 (g) The department and the commission, at least every five years, shall analyze
14 all fees for licenses, stamps, permits, tags, and other entitlements issued by it to
15 ensure the appropriate fee amount is charged. Where appropriate, the department
16 shall recommend to the Legislature or the commission that fees established by the
17 commission or the Legislature be adjusted to ensure that those fees are
18 appropriate.

19 **Comment.** Section 2780 continues former Section 713 without change.

20 **CHAPTER 4. EXPENDITURES**

21 **§ 2800. Expenditures generally**

22 2800. Except as provided in **Section 13230**, the money in the Fish and Game
23 Preservation Fund, commencing with the 2005-06 fiscal year, is available for
24 expenditure, upon appropriation by the Legislature, for all of the following
25 purposes:

26 (a) To the department for payment of refunds of sums determined by it to have
27 been erroneously deposited in the fund, including, but not limited to, money
28 received or collected in payment of fees, licenses, permits, taxes, fines, forfeitures,
29 or services.

30 (b) To the department for expenditure in accordance with law for the payment of
31 all necessary expenses incurred in carrying out this code and any other laws for the
32 protection and preservation of birds, mammals, reptiles, and fish.

33 (c) To the commission for expenditure in accordance with law for the payment
34 of the compensation and expenses of the commissioners and employees of the
35 commission.

36 **Comment.** Section 2800 continues former Section 13220 without change.

37 **§ 2805. Secret witness program**

38 2805. Notwithstanding Sections 2700 and 2810, the money collected from the
39 penalties on fines, penalties, or forfeitures levied pursuant to Section 3315 shall be

1 used only to pay the department’s costs of support for the department’s secret
2 witness program. The purpose of the secret witness program is to facilitate the
3 enforcement of this code and regulations adopted pursuant to this code.
4 Contributions to the secret witness program may also be made pursuant to
5 subdivision (k) of Section 2865.

6 **Comment.** Section 2805 continues former Section 13006 without change, except as indicated
7 below.

8 The following nonsubstantive changes were made:

- 9 • A cross-reference to former Section 13001 was revised to refer to the provision that
10 continues that section.
- 11 • A cross-reference to former Section 12021 was revised to refer to the provision that
12 continues that section.
- 13 • A cross-reference to former Section 13103(k) was revised to refer to the provision that
14 continues that section.

15 **Staff Note.** Section 13006 provides that a particular funding source be used only to pay for
16 “the department’s secret witness program.” See also Section 13103(k) (authorizing expenditures
17 for secret witness program).

18 There does not appear to be any provision in the Fish and Game Code that defines the powers
19 and duties of the referenced program. Nor are there any department regulations addressing a
20 “secret witness” program.

21 The department’s website provides information on the “Cal-TIP” program (“Californians Turn
22 in Poachers and Polluters”), which it describes as “a confidential secret witness program that
23 encourages the public to provide Fish and Wildlife with factual information leading to the arrest
24 of poachers and polluters.” See <<http://www.dfg.ca.gov/enforcement/caltip.aspx>>. There is no
25 statute or regulation or statute that describes the Cal-TIP program. (There is one regulation that
26 *references* the Cal-TIP program. It requires that a person who takes a Northern Pike call the Cal-
27 TIP toll-free telephone number within 24 hours. See 14 Cal. Code Regs. § 5.51.)

28 **Is the absence of any statute establishing or defining the program problematic?**

29 **§ 2810. Loans to General Fund**

30 2810. Notwithstanding any other provision of law, the Controller may use the
31 Fish and Game Preservation Fund for loans to the General Fund as provided in
32 Sections 16310 and 16381 of the Government Code.

33 **Comment.** Section 2810 continues former Section 13001(b) without change.

34 **TITLE 2. COUNTIES**

35 **§ 2850. County fish and wildlife propagation fund**

36 2850. (a) The amounts paid to and retained in the county treasury pursuant to
37 **Sections 12009** and 2710 shall be deposited in a county fish and wildlife
38 propagation fund and expended for the protection, conservation, propagation, and
39 preservation of fish and wildlife, under the direction of the board of supervisors,
40 pursuant to this chapter.

41 (b) All proposed expenditures from a county fish and wildlife propagation fund
42 shall be reviewed first at a regular meeting of the county board of supervisors or

1 its designated county fish and game commission to ensure compliance with
2 Section 2865.

3 **Comment.** Section 2850 continues former Section 13100 without change, except as indicated
4 below.

5 The following nonsubstantive changes were made:

- 6 • A cross-reference to former Section 13003 was revised to refer to the provision that
7 continues that section.
- 8 • A cross-reference to former Section 13103 was revised to refer to the provision that
9 continues that section.

10 **§ 2855. Agreement between counties**

11 2855. (a) The board of supervisors of any county may enter into a written
12 agreement with the board of supervisors of one or more counties for the
13 expenditure of any funds deposited in its fish and wildlife propagation fund
14 pursuant to Section 2850 for any purpose authorized by Section 2865 in either, or
15 any, of the counties for the joint benefit of both, or all, of the counties as the
16 judgment of the boards of supervisors may direct. The purchase of real property
17 necessary for that purpose is lawful and title thereto shall be taken in the joint
18 names of each county which contributes funds therefor. The property may be
19 deeded to the state upon the express condition that it shall be employed for the
20 purposes of this title within the counties.

21 (b) The board of supervisors of one or more counties may enter into a written
22 agreement with the department for the expenditure of any funds deposited in its
23 fish and wildlife propagation fund pursuant to Section 2850 for any purpose
24 authorized by Section 2865.

25 **Comment.** Section 2855 continues former Section 13101 without change, except as indicated
26 below.

27 The following nonsubstantive changes were made:

- 28 • Cross-references to former Section 13100 were revised to refer to the provision that
29 continues that section.
- 30 • Cross-references to former Section 13103 were revised to refer to the provision that
31 continues that section.
- 32 • A reference to “this chapter” was replaced with “this title.”

33 **§ 2860. Expenditures subject to Gov’t Code § 29000 et seq**

34 2860. Expenditures from the fish and game propagation fund of any county shall
35 be subject to the provisions of Division 3 (commencing with Section 29000) of
36 Title 3 of the Government Code.

37 **Comment.** Section 2860 continues former Section 13102 without change, except as indicated
38 below.

39 The following nonsubstantive change was made:

- 40 • A reference to the “fish and game propagation fund” was replaced with a reference to
41 the “fish and wildlife propagation fund.” This conforms to the usage in Sections 2850,
42 2855, 2865, and 2870.

1 § 2865. Authorized expenditures

2 2865. Expenditures from the fish and wildlife propagation fund of any county
3 may be made only for the following purposes:

4 (a) Public education relating to the scientific principles of fish and wildlife
5 conservation, consisting of supervised formal instruction carried out pursuant to a
6 planned curriculum and aids to education such as literature, audio and video
7 recordings, training models, and nature study facilities.

8 (b) Temporary emergency treatment and care of injured or orphaned wildlife.

9 (c) Temporary treatment and care of wildlife confiscated by the department as
10 evidence.

11 (d) Breeding, raising, purchasing, or releasing fish or wildlife which are to be
12 released upon approval of the department pursuant to **Sections 6400 and 6401**
13 onto land or into waters of local, state, or federal agencies or onto land or into
14 waters open to the public.

15 (e) Improvement of fish and wildlife habitat, including, but not limited to,
16 construction of fish screens, weirs, and ladders; drainage or other watershed
17 improvements; gravel and rock removal or placement; construction of irrigation
18 and water distribution systems; earthwork and grading; fencing; planting trees and
19 other vegetation management; and removal of barriers to the migration of fish and
20 wildlife.

21 (f) Construction, maintenance, and operation of public hatchery facilities.

22 (g) Purchase and maintain materials, supplies, or equipment for either the
23 department's ownership and use or the department's use in the normal
24 performance of the department's responsibilities.

25 (h) Predator control actions for the benefit of fish or wildlife following
26 certification in writing by the department that the proposed actions will
27 significantly benefit a particular wildlife species.

28 (i) Scientific fish and wildlife research conducted by institutions of higher
29 learning, qualified researchers, or governmental agencies, if approved by the
30 department.

31 (j) Reasonable administrative costs, excluding the costs of audits required by
32 Section 2870, for secretarial service, travel, and postage by the county fish and
33 wildlife commission when authorized by the county board of supervisors. For
34 purposes of this subdivision, "reasonable cost" means an amount which does not
35 exceed 15 percent of the average amount received by the fund during the previous
36 three-year period, or ten thousand dollars (\$10,000) annually, whichever is greater,
37 excluding any funds carried over from a previous fiscal year.

38 (k) Contributions to a secret witness program for the purpose of facilitating
39 enforcement of this code and regulations adopted pursuant to this code.

40 (l) Costs incurred by the district attorney or city attorney in investigating and
41 prosecuting civil and criminal actions for violations of this code, as approved by
42 the department.

1 (m) Other expenditures, approved by the department, for the purpose of
2 protecting, conserving, propagating, and preserving fish and wildlife.

3 **Comment.** Section 2865 continues former Section 13103 without change, except as indicated
4 below.

5 The following nonsubstantive change was made:

- 6 • A cross-reference to former Section 13104 was revised to refer to the provision that
7 continues that section.

8 **§ 2870. Audit**

9 2870. The department may audit, or require the county to audit, expenditures by
10 the county from its fish and wildlife propagation fund in order to determine
11 compliance with this title. If, after reviewing the audit, the department determines
12 that expenditures are not in compliance with this title, the department may require
13 that all expenditures from the fund be temporarily suspended, or it may seek
14 reimbursement of funds that the department determines, based on the audit, were
15 expended improperly, or both.

16 **Comment.** Section 2870 continues former Section 13104 without change, except as indicated
17 below.

18 The following nonsubstantive changes were made:

- 19 • References to “this chapter” were replaced with “this title.”

DISPOSITION OF FORMER LAW

The table below shows the relationship between each provision of the existing Fish and Game Code and the corresponding provision of the proposed law (if any).

<i>Existing Provision</i>	<i>Proposed Provision(s)</i>	<i>Existing Provision</i>	<i>Proposed Provision(s)</i>
710	2600	13001.5	2655
710.5	2605	13002	2705
710.7	2610	13003	2710
711	2615	13006	2805
712	2620	13100	2850
712.5	2735	13101	2855
713	2780	13102	2860
859	2740	13103	2865
860	2750	13104	2870
1050(e)	2775	13200	2660
1050.8	2745	13201	2665
1226(a)	2730	13202	2670
13000	2650	13203	2675
13001(a)	2700	13220	2800
13001(b)	2810		