

First Supplement to Memorandum 2017-38

Fish and Game Law (Comments of Secretary John Laird)

The Commission¹ has received a letter from John Laird, Secretary for California Natural Resources.

In the letter, which is attached as an Exhibit, Secretary Laird thanks the Commission for its work to reorganize the Fish and Game Code, but asks for a “temporary refocusing” of the Commission’s efforts, to accommodate an unexpected development.

As the letter explains, the Budget Act of 2017 included a requirement that the Department of Fish and Wildlife undergo a three-year “Mission-Based” or “Zero-Based” budget review. As part of that process, all of the department’s statutory mandates will be analyzed by the Department of Finance.

Significant changes to the Fish and Game Code could result from that review, but the scope of such changes will not be known for some time.

Secretary Laird requests that the Commission temporarily suspend its efforts to reorganize the Fish and Game Code until “there is greater clarity on the type of changes the Department of Finance may propose.” Instead, he asks that the Commission shift its attention to a different component of this study, which could be immediately valuable to the Department of Finance in conducting its three-year review of the department’s mandates.

The resolution that authorized the Commission’s work on the Fish and Game Code included language requesting that the Commission study whether the Fish and Game Code “should be revised to ... clarify program authority and funding sources.”² That task was explained more fully in a letter that the Commission received from Diane Colborn (then Chief Consultant for the Assembly Water,

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

Parks & Wildlife Committee) and William Craven (Chief Consultant for the Senate Committee on Natural Resources and Water)³ The letter was also reviewed by Tom Gibson, then General Counsel for the Department of Fish and Game.

As the letter explained (with emphasis added):

[I]t would also be helpful if the LRC could identify mandates and responsibilities of the Department of Fish and Game and the Fish and Game Commission, identify areas where particular mandates and responsibilities may overlap with the mandates and responsibilities of other agencies, *and identify programs that lack identified funding sources.*⁴

It is the last point that Secretary Laird would like the Commission to prioritize. A careful analysis and description of the statutory funding structures within the Fish and Game Code could be helpful to both the Department of Fish and Wildlife and the Department of Finance.

The staff believes it would not be problematic if the Commission were to refocus its Fish and Game study along these lines:

- Temporarily suspend further work on Parts 2 and 3 of the tentative recommendation.
- Complete an informational report on the funding specified in the Fish and Game Code (including the identification of mandates for which there is no dedicated funding source). This would likely take one or two meeting periods to complete (i.e., two to four months).
- Review public comments on Part 1 of the recodification tentative recommendation (another one or two meetings).
- After the end of the 17-18 Fiscal Year, prepare a new tentative recommendation that includes the entirety of the proposed Fish and Wildlife Code. This tentative recommendation would include any changes made pursuant to public comment on Part 1 and would incorporate any statutory changes made in the budget process.

In addition to accommodating Secretary Laird's preference and providing a useful tool to the Department of Finance, the staff also sees benefit in making another thorough pass through the tentative recommendation before releasing it for public comment.

3. See Memorandum 2012-9, Exhibit pp. 1-4.

4. *Id.* at Exhibit p. 1.

The only significant downside of this approach is that it could delay introduction of implementing legislation by another year. The staff has discussed that possibility with legislative committee staff. While an earlier implementation is preferred, the legislative staff did not think that a year's delay would cause the Legislature any problems.

How would the Commission like to proceed?

Respectfully submitted,

Brian Hebert
Executive Director



via U.S. mail and e-mail <bhebert@clrc.ca.gov>

July 31, 2017

Susan Duncan, Chairperson
California Law Revision Commission
c/o Brian Hebert, Executive Director
4000 Middlefield Road, Room D-2
Palo Alto, CA 94303-4739

Dear Ms. Duncan:

As the Secretary of the California Natural Resources Agency, I chaired the Executive Committee for the Fish and Wildlife Strategic Vision ("Strategic Vision") effort that concluded approximately five years ago. The stakeholder-led process resulted in a series of recommendations intended to help the Department of Fish and Wildlife ("Department") better represent the diverse interest groups in California that focus on fish and wildlife.

As you know, one important recommendation related to the California Law Revision Commission ("CLRC") that came from the Strategic Vision process was to:

[re]view the California Fish and Game Code and Title 14 of the California Code of Regulations to identify and make recommendations to (1) resolve inconsistencies; (2) eliminate redundancies; (3) eliminate unused and outdated code sections; (4) consolidate sections creating parallel systems and processes; and (5) restructure codes to group similar statutes and regulations. (Strategic Vision p. 21.)

Based on this and other Strategic Vision recommendations related to Department mandates and funding, the California legislature approved the CLRC to study:

[w]hether 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. (Assem. Conc. Res. No.98, Stats. 2012.)

I write to thank the CLRC for its work to date, and to ask for a temporary refocusing to clarify the Department's program authority and funding sources. I understand your review of the Code to improve organization is not yet complete, but the CLRC's short term assistance on the subjects of mandates and funding is essential in light of recent Budget Act direction. (Assem. Bill No. 97 (2017-2018).)

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The Budget Act of 2017 included a requirement that the Department undergo a process over the next three years referred to as Mission-Based or Zero-Based Budgeting. During this period, any and all statutory mandates will be subject to Department of Finance review and recommended modification. The primary reason the Department is going through this process now is a substantial imbalance in a major fund used by the Department to operate its key programs. We expect the Mission-Based Budgeting Process to result in amendments to the Fish and Game Code.

We are requesting that the CLRC pause their reorganization efforts during this budgeting process for two reasons. First, Department of Finance input may result in significant changes to the Fish and Game Code. In order for the CLRC's reorganization proposals to be comprehensive, it could defer its review until there is greater clarity on the type of changes the Department of Finance may propose. Second, redirecting CLRC input into Department funding and mandates could be very helpful in both the new stakeholder review and the Department of Finance inquiry.

Thank you in advance for giving this request serious consideration. We look forward to continuing to work toward an improved Department.

Sincerely,

A handwritten signature in blue ink that reads "John Laird". The signature is written in a cursive style with a large initial "J".

John Laird
Secretary for California Natural Resources

cc: Charlton Bonham, Director, Department of Fish and Wildlife