




## The CDFG Threat to Agriculture in Siskiyou County

The California Dept. of Fish and Game is actively engaged in an un-precedential "Take" of water, money and power in Siskiyou County.

CDFG is using fish and game code section 1600 LSAA (Lake & Streambed alteration agreement), CEQA (California Environmental Quality Assessment), and ITP (Incidental Take Permit) as its primary method of attack.

Hiding behind the cloak of Environmental concern, the CDFG is using color of authority to threaten, coerce, and extort legitimate water right owners into voluntary compliance with a so-called mandatory permitting process. This process would modify judicial water decrees. CDFG would then replace the State Water Resources Board as the lead monitoring agency. CDFG would gain direct control over adjudicated, riparian, and contracted water rights. CDFG would be in the position to extort exorbitant and ultimately endless streams of fees to the detriment of every legitimate water right owner in the state. This power grab places CDFG in total



control of a large portion of California's Agricultural water. We the people, (owners) of these water rights, say NO!

The CDFG has chosen Siskiyou County as its "poster child" for this permitting process. They have rightly determined that Siskiyou County is sparsely populated and as such, lacks the political power to resist this take of our property and our property rights. This is an outrageous crime!

We the people of Siskiyou County, have a very small voice in these matters. Our group, P.O.W. (Protect our Water), in conjunction with The Siskiyou County Water Users Association have no choice, but to resort to Civil Disobedience.

We will not sign away our Liberty, our Property, or our Property Rights! We are prepared to fight for our way of life. We stand upon our Constitutional rights and the laws of the State of California.

We need your help to right this despotic and draconian wrong. We ask you to be our voice of reason to shed the light of day on the actions of CDFG.

Time is of the essence. The CDFG is sending teams of armed Game Wardens to individual properties to threaten people with violation and prosecution for failing to volunteer to sign up for the "Permitting Process".

### CDFG's Position

The California Department of Fish and Game has decided that they have been incorrectly interpreting CDFG code 1600 for the past fifty years. CDFG contends that water right owners/diverters have been in violation of section 1600 since 1961. CDFG proposes to correct these alleged violations and may not prosecute, provided water right owners sign up for the new "permitting process". (Per Director Stopher at the first informational meeting)

Section 1600 was enacted in 1961 to prevent gravel mining and various other types of construction "projects" from "substantially altering the flow, bed, bank, or channel of a river, stream or lake," without a permit.

CDFG has decided to interpret Sec 1600 to mean; the act of opening a head gate during routine agricultural activities constitutes a substantial altering of flow.

Mr. Stopher, when questioned about the definition of substantial, replied, and I quote, "substantial is whatever I say it is." One woman, who owns a very very small water right, asked if garden water was significant enough to trigger this process. Mr. Stopher replied, "Well, yes, since any water use could adversely affect a species, it is substantial and you need to sign up or you could be prosecuted."

According to CDFG, if a water right owner submits a 1602 application, the right owner, would then become subject to the regulation of CEQA and as a result, the ITP. This would generate substantial fees for CDFG.

The application process can go on for months. Fees can be as much as twenty five to thirty thousand dollars per diversion. Some "Mitigation fees" may be open ended since, "there are many questions about the process that we cannot answer at this time", said the Shasta RCD director.



○ To summarize:

For the first time, CDFG calls opening the head gate a sec. 1600 violation.

For the first time, CDFG claims individual diverters engaged in routine agricultural activities regarding water are subject to CEQA, CESA, and ITP.

Fees per diversion include but are not limited to:

(See attached summary of estimated costs)

LSAA....Between \$224.00 and \$4482.75

CEQA filing fee.....one or more deposits of \$1500-\$2500.00 minimum for the first deposit.

CEQA preparation costs.... \$10,000-\$20,000 or more.

CEQA compliance costs.....open ended

CEQA notification Fee....between \$224.00 and \$ 4472.85

CEQA filing Fee to State.... \$2010 plus \$2792.00 for EIR

○ ITP Application Fee.... Under consideration, unknown

ITP mitigation costs (fish present in your creek or not.)....open ended

Initial deposit.... All filing fees plus \$2500.00

I am unable to determine which fees are recurring from CDFG paperwork.

Applicant must be able to guarantee third party access.

The water right owner must guarantee CDFG access to any and all property impacted by the permit process. This includes property owned by disinterested parties. If the water right owner is unable to comply, No permit will be issued. (See attached Right of Entry agreement for the Benefit of a Third Party). The right owner would thus be barred from exercising his water right.

These permits will give CDFG the authority to dictate water allocation reductions to maintain in stream flows without regard to adjudication, economic or harmful

affects to the right owner and regardless of the reason for the ordered reduction.

CDFG is claiming that many previously acceptable routine practices, such as, streambed crossings, riparian grazing and riparian fencing, are for the first time, subject to 1602 permits.

CDFG has declared that open ended Sec. 1603 permits held by some property owners are now null and void. CDFG has no such authority. These open ended permits were and continue to be legal contracts.

CDFG does not allow for any arbitration process to settle disputes encountered before, during or after the "permit process".

Mr. Stopher said during one of the "informational workshops", "There is no arbitration process". When asked to whom appeals could be made in the absence of an arbitration process, Mr. Stopher replied,

"I don't have a boss, well maybe the Governor".

This is a false statement intended to threaten water right owners. Sec 1600 does contain an arbitration process.

## The Evidence against CDFG and the Permit Process

There are several types of water rights in the state of California. These water rights must be proven before they become “property”. Once these rights become property they become an inalienable right as guaranteed by the Constitution of the State of California, Article I, Section I.

The Superior court for the State of California has simplified this in most adjudicated cases by stipulating that the holders of these rights become the lawful owner of the water right as set forth in the Court Decree. In order to participate in the decree claimants must prove a prior water right. For example, the water right to our ranch was recorded in Mining Book number 1, County of Siskiyou, in April of 1859. (See attachment).

Riparian rights require no permit and also do not require beneficial use as do Court Decreed rights. Riparian rights, like adjudicated water rights pass with the deed to the property from owner to successive owner.



○ The court has also defined "Water Right" to mean:

"The various claimants in the proceeding are entitled to use of the waters of said stream system upon the places of use hereinafter described under their respective classes listed in the appropriate Schedules (different wording depending upon the decree), and are entitled to DIVERT SAID WATERS AT THE RESPECTIVE POINTS OF DIVERSION FROM SAID STREAM SYSTEM AS HEREINAFTER NAMED..."

There is no mention what so ever of CDFG in any of our water rights or any of the court decrees.

Furthermore, the court decrees have never been set aside or modified in any way to allow CDFG to usurp or replace the State Water Resources Board as the monitoring agency.

The monitoring of the Decree falls to DWR and not CDFG.

The Constitution of California Article 1, Sec 3 provides that we may not be deprived of life, liberty or property without due process of law.

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Article 1 Sec 19, provides, that private property may only be taken for public purpose with just compensation ascertained by jury.

U.S. Constitution Article 5 provides that private property will not be taken for public purpose without just compensation.

Supreme Court, 1803, Marbury v Madison held that any law repugnant or contrary to the Constitution immediately becomes null and void. Marbury v Madison has never been set aside or modified

Routine Agricultural activities have been historically exempt from ITP and CEQA sec. 15261 (see attachment). The obvious fact is that no criminal prosecution exists if routine activities are followed. In the CDFG letters to water right owners there is no mention of this exemption.

The obvious purpose of the CDFG is to frighten, threaten, and to coerce water right owners into giving control of their property, water rights, farming, and ranching operations to the CDFG through the permitting process.

CDFG is comprised of Public Officers and Peace Officers, and as such, their representations as to the legal requirements and threat of fines, prosecution, and imprisonment take on a very different character commonly known as color of authority, defined by PC 518.

PC 519.2, Accusations of a crime as a means to extortion. (For example, insinuating that failure to obtain an ITP for the use of an individual diversion is a crime).

PC 521, Using color of authority for the purpose of extortion is a crime.

PC 522 Obtaining signatures by any means of extortion or by means of threat are a crime.

PC 523 The mailing of threatening letters to extort money or action even if no action results is a crime.

○ PC Sec. 146b Representing that the state wants information or a Permit, when the State in fact does not request these documents is a crime.

The State legislature does not currently require Incidental Take Permit in routine agricultural activity and yet the CDFGs letters and comments very distinctly seem to say that it does.

If the position of CDFG is in fact law. Why are these provisions not being enforced evenly throughout the State?

If the water right owners in Siskiyou County have been in violation of Section 1600 for fifty years, why has nothing been done about this before?

Why are we the only ones being coerced and threatened into giving up our property and our right to our Liberty?

Some of our families have been ranching or farming in Siskiyou County for more than 150 years. Most of us have engaged in the routine exercise of water rights for a very long time. Our water rights have not been legally modified in any way. Why are we all of a sudden in violation?

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○ The answer is simple, this is an outrageous abuse of power and excess of authority by CDFG and we say NO!

### WHY P.O.W. IS ASKING FOR YOUR HELP

The CDFG (an arm of the executive branch of government), is attempting to grab power by usurping legislative and judicial power. We will defend our property. It is our Constitutional right.

The CDFG is attempting to impose and un-levied tax upon the diverters of our county.

As our elected representative it is your duty and responsibility to fight this unprecedented grab for power.

Without your help, this could be a very long struggle. We have pledged our lives and liberty to one another to preserve our way of life and our livelihood in Siskiyou County.

○ Agriculture is the largest economic engine in the county and without our legal water rights we will cease to

○ produce food so desperately needed by our country and the world. Each and every one of our farms and ranches is its own ecosystem. Without the water, our ecosystems may very well cease to exist. How can we look at our families and say that we gave in without fighting for our rights.

We need an immediate legislative order for the CDFG to cease and desist threatening and frightening law abiding citizens engaged in the lawful activity of diverting irrigation water.

We are formally requesting that the State Attorney General investigate and prosecute CDFG and/or any official or peace officer who conceived, planned or participated in using color of authority to extort fees, property, or information from law abiding citizens.

The above mentioned offenses are crimes.

The CDFG is a clear example of government out of control.

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○ We need legislation or hearings to expose the CDFG and their agenda to the light of day and to stop appointed officials from pretending to have the power to tax and to legislate.

Follow the money and you will find that this struggle has nothing what so ever to do with fish or the environment. Poor Science and oppressive regulation will never save the environment. Scott and Shasta Watersheds have been applauded state wide for our voluntary efforts to conserve and improve the environment. The CDFG has destroyed that spirit with this latest attempt to grab the money and the water.

○ If called upon to do so, I can prove with documentation that the CDFG was engaged in the practice of killing Coho Salmon in violation of Federal Listing. This is money and a grab for water and power. Control the water and you will control the land and the people on the land.

Thank you,

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Committee member representing P.O.W. and the  
Siskiyou Water Users Association.

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## Article 18. Statutory Exemptions

### SECTIONS 15260 TO 15285

#### 15260. GENERAL

This article describes the exemptions from CEQA granted by the Legislature. The exemptions take several forms. Some exemptions are complete exemptions from CEQA. Other exemptions apply to only part of the requirements of CEQA, and still other exemptions apply only to the timing of CEQA compliance.

**Note:** Authority cited: Section 21083, Public Resources Code; Reference: Section 21080(b), Public Resources Code.

#### 15261. ONGOING PROJECT

- (a) If a project being carried out by a public agency was approved prior to November 23, 1970, the project shall be exempt from CEQA unless either of the following conditions exist:
  - (1) A substantial portion of public funds allocated for the project have not been spent, and it is still feasible to modify the project to mitigate potentially adverse environmental effects, or to choose feasible alternatives to the project, including the alternative of "no project" or halting the project; provided that a project subject to the National Environmental Policy Act (NEPA) shall be exempt from CEQA as an on-going project if, under regulations promulgated under NEPA, the project would be too far advanced as of January 1, 1970, to require preparation of an EIS.
  - (2) A public agency proposes to modify the project in such a way that the project might have a new significant effect on the environment.
- (b) A private project shall be exempt from CEQA if the project received approval of a lease, license, certificate, permit, or other entitlement for use from a public agency prior to April 5, 1973, subject to the following provisions:
  - (1) CEQA does not prohibit a public agency from considering environmental factors in connection with the approval or disapproval of a project, or from imposing reasonable fees on the appropriate private person or entity for preparing an environmental report under authority other than CEQA. Local agencies may require environmental reports for projects covered by this paragraph pursuant to local ordinances during this interim period.
  - (2) Where a project was approved prior to December 5, 1972, and prior to that date the project was legally challenged for noncompliance with CEQA, the project shall be bound by special rules set forth in Section 21170 of CEQA.
  - (3) Where a private project has been granted a discretionary governmental approval for part of the project before April 5, 1973, and another or additional discretionary governmental approvals after April 5, 1973, the project shall be subject to CEQA only if the approval or approvals after April 5, 1973, involve a greater degree of responsibility or control over the project as a whole than did the approval or approvals prior to that date.

**Note:** Authority cited: Section 21083, Public Resources Code; Reference: Sections 21169, 21170, and 21171, Public Resources Code; *County of Inyo v. Yorty*, 32 Cal. App. 3d 795.

#### 15262. FEASIBILITY AND PLANNING STUDIES

A project involving only feasibility or planning studies for possible future actions which the agency, board, or commission has not approved, adopted, or funded does not require the



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## Summary of Estimated Cost for Compliance with Section 1600 of the Fish and Game Code and the California Endangered Species Act for Individual Permit Applicants

### Application for Incidental Take Authorization and Notification of Lake or Streambed Alteration Fees.

There currently is no application fee for an Incidental Take Permit (ITP). However, at this time the Department is considering the requirement of a fee for submittal of an ITP application. The fee for notification of Lake or Streambed Alteration (1602) ranges between \$224.00 and \$4,482.75 for a normal five year Agreement. This fee is based on a single activity. For a person with three activities, for example the operation of two diversions on a single stream and an instream crossing, three separate notification fees are required for a total of between \$672.00 and \$13,448.25 dollars. However, it is likely that all three activities would be covered under one 1602 Agreement.

### California Environmental Quality Act (CEQA).

If DFG is the Lead Agency, DFG will charge and collect a fee to recover its estimated CEQA-related costs in accordance with section 21089 of the Public Resources Code. DFG will recover its estimated CEQA-related costs by collecting from the applicant one or more deposits. The amount of the first deposit shall be at least \$1,500-\$2,500.00.

### Cost of Preparation of Draft CEQA Documents for Department Review

The cost of preparing documents for use by DFG will vary based on the location, species affected and proposed actions. The preparation of documents will likely include a preliminary analysis to determine whether an Environmental Impact Report (EIR) or Negative Declaration (ND) must be prepared as well as the draft and final EIR or ND. The average cost for preparation of these documents will likely vary from \$10000.00 to \$20,000 dollars or more<sup>1</sup>. Additionally, depending on the proposed project, hydrological and biological studies or surveys may be required.

### CEQA filing fees

A State filing fee is required when environmental documents are prepared under CEQA. For negative declarations and mitigated negative declarations the fee is \$2,010.25 and for environmental impact reports the fee is \$2,792.25

### Summary of Estimated Cost for Sample Agricultural Operator with one diversion

ITP Application Fee:	0.00
LSAA Notification Fee:	\$ 224.00 to \$ 4,482.75 (per project)
CEQA Preparation	~\$10,000.00 to \$20,000.00 (depends on consultant and project)
CEQA Filing Fee	\$ 2,010.25 to \$ 2,792.25
<b>Total Cost (range)</b>	<b>\$12,234.25 to \$27,275.00</b>

<sup>1</sup> The amounts presented here are for discussion purposes only.