

CALIFORNIA CODES
FISH AND **GAME CODE**
SECTION 5930-5948

5930. The department shall, from time to time, examine all dams in all rivers and streams in this State naturally frequented by fish.

5931. If, in the opinion of the commission, there is not free passage for fish over or around any dam, the department shall cause plans to be furnished for a suitable fishway, and order in writing the owner of the dam to provide the dam, within a specified time, with a durable and efficient fishway, of such form and capacity and in such location as shall be determined by the department. Such fishway shall be completed by the owner of the dam to the satisfaction of the department within the time specified.

5932. When all of the provisions of this article have been complied with, if in the opinion of the commission changed conditions make additional structures desirable for the free passage of fish, the department may make such additional structures and may expend such sums of money as it deems necessary for such additional construction, including the cost of insurance against any liability which the department may incur in connection with such structures.

5933. Whenever an application for approval of plans and specifications for a new dam in any stream in this State, or for the enlargement of any dam in any such stream, is filed with the Department of Water Resources, pursuant to Part 1 (commencing with Section 6000) of Division 3 of the Water **Code**, a copy of such application shall be filed by the applicant with the commission. If then the commission deems that the construction of a fishway over such a dam is necessary for the preservation and protection of fish, and that construction and operation of such fishway is practicable, it shall set a date for a hearing to be held within 90 days after filing of such application with the commission.

At such hearing the applicant shall be entitled to introduce evidence to show that construction of the fishway is not necessary or is not practicable, taking into consideration the height of the dam and the amount of water available.

If, after the hearing, the commission finds that the construction of the fishway is necessary and practicable it shall, within five days after such hearing, notify the applicant to that effect.

After notice from the commission that a fishway is required, it shall be unlawful to commence the construction of any new dam or the enlargement of any dam without first obtaining the written approval of the commission of the design for such a fishway.

5934. The commission or any party may, in any hearing, cause the deposition of witnesses to be taken in the manner prescribed by law for depositions in civil actions in the superior courts of this state under Article 3 (commencing with Section 2016) of Chapter 3 of Title 4 of Part 4 of the **Code** of Civil Procedure.

5935. The owner of any dam upon which a fishway has been provided shall keep the fishway in repair and open and free from obstructions to the passage of fish at all times.

5936. It is unlawful to wilfully destroy, injure, or obstruct any fishway.

5937. The owner of any dam shall allow sufficient water at all times to pass through a fishway, or in the absence of a fishway, allow sufficient water to pass over, around or through the dam, to keep in good condition any fish that may be planted or exist below the dam. During the minimum flow of water in any river or stream, permission may be granted by the department to the owner of any dam to allow sufficient water to pass through a culvert, waste gate, or over or around the dam, to keep in good condition any fish that may be planted or exist below the dam, when, in the judgment of the department, it is impracticable or detrimental to the owner to pass the water through the fishway.

5938. Whenever in the opinion of the commission it is impracticable, because of the height of any dam, or other conditions, to construct a fishway over or around the dam, the commission may, in lieu of the fishway, order the owner of the dam completely to equip, within a specified time, on a site to be selected by the department, a hatchery, together with dwellings for help, traps for the taking of fish, and all other equipment necessary to operate a hatchery station, according to plans and specifications furnished by the department. After such hatchery has been constructed, the department shall operate it without further expense to the owner of the dam except as provided in Sections 5940 and 5941.

5939. The hatchery, traps, and other equipment necessary to operate a hatchery station shall not be of a size greater than necessary to supply the stream or river with a reasonable number of fish. The owner of the dam shall permit the department to locate the hatchery, dwellings, traps, and other equipment upon any of the land of the owner of the dam upon a site or sites to be mutually agreed upon by the department and the owner of the dam.

5940. If the owner of the dam generates electricity at the place of the dam, he shall furnish sufficient light, without charge, for the use of the hatchery.

5941. The owner shall permit the use of water, without charge, to operate the hatchery.

5942. The commission may, in lieu of a fishway, hatchery, dwelling, traps or other equipment necessary to operate a hatchery station, order the owner of the dam to plant, under the supervision of the department, the young of such fish as naturally frequent the waters of the stream or river, at such times, in such places, and in such numbers as the commission may order.

5943. (a) The owner of a dam shall accord to the public for the purpose of fishing, the right of access to the waters impounded by the dam during the open season for the taking of fish in the stream or river, subject to the regulations of the commission.

(b) Subdivision (a) does not apply to any impoundment of water by a dam that is wholly located on privately owned land that is primarily agricultural or residential in nature if the impounded waters are from a stream or river that is not naturally frequented by fish and if the dam does not prevent the free passage of fish over or around the dam. The Legislature finds and declares that this subdivision is intended to be declaratory of existing law.

5944. The owner of a dam is not liable in damages to any person exercising the right to fish, who suffers any injury through coming in contact with, or tampering with, any of the property of the owner of the dam.

5945. The department may sell, at cost, to the owner of a dam, young fish ordered to be planted.

5946. The provisions of Section 5938 shall not be applicable to dams constructed in District 41/2 after September 9, 1953.

No permit or license to appropriate water in District 41/2 shall be issued by the State Water Rights Board after September 9, 1953, unless conditioned upon full compliance with Section **5937**. Plans and specifications for any such dam shall not be approved by the Department of Water Resources unless adequate provision is made for full compliance with Section **5937**.

5947. It is unlawful for the owner of a dam in District 41/2 to release water from the dam, or any facilities for the generation of

hydroelectric energy operated in connection therewith, in varying flows in such a manner as to destroy fish life below such release.

5948. No person shall cause or having caused, permit to exist any log jam or debris accumulation or any other artificial barrier, except a dam for the storage or diversion of water, public bridges and approaches thereto, groins, jetties, seawalls, breakwaters, bulkheads, wharves and piers permitted by law, and debris from mining operations, in any stream in this state, which will prevent the passing of fish up and down stream or which is deleterious to fish as determined by the commission, subject to review by the courts.