

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

NUMBER 706133		CLERK Jean Peterson	REPORTER Kathleen Long P.O. Box 128, San Diego, CA 92112-4104	
DATE OF HEARING 01/09/98	TIME OF HEARING 01:30PM	DATE COMPLAINT FILED 12-09-96	JUDGE Hon. Judith McConnell	DEPT 48
PLAINTIFF/PETITIONER Marshall Farms USA Inc.			DEFENDANT/RESPONDENT California State Fish and Game Commission	
ATTORNEY FOR PLAINTIFF/PETITIONER Chris M. Amantea (1)			ATTORNEY FOR DEFENDANT/RESPONDENT Randall B. Christison	

1. PLAINTIFF WRIT OF MANDATE -- APPEARANCE

THIS MATTER HAVING GONE BEFORE THE COURT THIS DATE, THE COURT ORDERS:

TENTATIVE RULING:

Petitioner's petition for Writ of Mandate is granted. The court finds Respondent has a mandatory duty to determine whether ferrets are or are not "normally domesticated" within the meaning of Fish and Game Code Section 2116.

The court noted Respondent's contention that it does not have the authority to make this determination because: (1) Members of Mustelidae family are specifically restricted as undesirable and menacing under Section 2118; and (2) Section 2118(k) only allows the Commission to add or delete animals "in addition to" those restricted under Section 2118.

Though Section 2118 does state that ferrets and related animals are restricted because they are undesirable and menacing, this statement, read in context, appears to be nothing more than a clarification to the general legislative findings contained in Section 2116.5. Even if the statement were read in isolation, it falls far short of a legislative declaration that animals in the Mustelidae family can never be delisted or that the jurisdiction to delist these animals is reserved solely for legislature.

Similarly, though Section 2118(k) is somewhat unartfully written, the most reasonable interpretation is that it gives Respondent the discretion to add or delete animals from the statutory list of restricted species as well as any list of restricted species Respondent creates under the authority granted to it in Section 2118(i). In fact, in light of Section 2118(i), any other interpretation would render Section 2118(k) largely superfluous. Moreover, to the extent Section 2118(k) is ambiguous, the legislative history provided by Petitioner clearly indicates that the legislature intended Respondent to have complete authority to add or delete animals from the statutory list of restricted species. See A.R. 510, 517, 519, and 521 at Tab 38.

As for Respondent's argument that the Commission has already made a determination re: the status of the ferret, Petitioner correctly points out that this argument is at odds with the position taken by respondent below. Respondent specifically found that it did not have the authority to deregulate the ferret. So, it is inappropriate for Respondent to now claim that it does have the authority and that merely chose not to change the status of the ferret. In addition, Petitioner correctly points out that the regulations upon which respondent relies pre-date the enactment of the portions of the Fish and Game Code which require Respondent to determine which animals are not normally domesticated. See A.R. 508-510 at Tab 38.

As for Respondent's contention that the determination of the ferret's status is discretionary and cannot be compelled by Writ of Mandate, Respondent is only partially correct. Though the court cannot compel Respondent to exercise its discretion in a particular manner, the court can compel Respondent to act because the language of Section 2116, coupled with the legislative history provided by Petitioner clearly indicate that Respondent is required to determine one way or another whether the ferret is a wild animal.

Finally, as for Respondent's contention that the evidence in the record supports the conclusion that the ferret is not normally domesticated, this contention is premature as Respondent never actually made a determination about the status of the ferret.

Petitioner's request for Declaratory Relief, as articulated in Petitioner's reply brief, is moot in light of the above ruling.

Petitioner is ordered to prepare and submit a proposed judgment and a proposed writ for the court's approval by no later than January 23, 1998.

This ruling disposes of this matter in its entirety.

DATED: 01/09/98