

**Meeting of the Central Valley Flood Protection Board
April 27, 2012**

Staff Report – Resolution 2012-17

**Delegation of Authority to the Executive Officer
For Permitting and Enforcement**

1.0 – ITEM

Consider approval of Resolution 2012-17 delegating authority to the Executive Officer to approve or deny permits and to issue cease and desist orders in accordance with the California Code of Regulation, Title 23, Division 1.

2.0 – COMMITTEE

Board Member Emma Suarez
Executive Officer Jay Punia
Chief Engineer Len Marino
Supervising Engineer Curt Taras
Supervising Engineer Eric Butler

3.0 – DESCRIPTION

In laws (A.B. 1165), passed in 2009, the California State legislature granted authority to the Board to delegate to its Executive Officer specific authorities to approve or deny permits and issue cease and desist orders. The law said:

“The board may, by regulation, define types of encroachments that will not significantly affect any element of the State Plan of Flood Control. Evidentiary hearings are not required for uncontested applications for those defined encroachments unless, in the judgment of the executive officer, there is a reasonable possibility that the project will have a significant effect on an adopted plan of flood control.”

In regulations (CCR Title 23 Div. 1, Revision: Tier 1 B) approved by the California Office of Administrative Law on February 15, 2012, the Board defined the type of encroachments that will not significantly affect any element of the State Plan of Flood Control. The regulations also defined the enforcement actions that can be taken by the Executive Officer to remove or modify encroachments on levees, channels, and other flood control works necessary to avoid an unreasonable impact on public safety.

Under these laws and regulations now in effect, the Board can delegate additional authorities to the Executive Officer. These delegations will help streamline the issuance of routine permits and provide an efficient method to enforce code violations.

4.0 – STAFF RECOMMENDATION

Board Staff is Recommending the Board:

- Approve Resolution 2012-17 delegating authority to the Executive Officer to approve or deny permits and to issue cease and desist orders in accordance with the California Code of Regulation, Title 23, Division 1.

5.0 – LIST OF ATTACHMENTS

- A. Resolution 06-08 General Delegation of Authority, Apr 21, 2006
- B. Resolution 2012-17 Delegation of Authority for Permitting and Enforcement

Document Preparation: Curt Taras

STATE OF CALIFORNIA
THE RESOURCES AGENCY
THE RECLAMATION BOARD

RESOLUTION NO. 06-08

GENERAL DELEGATION OF AUTHORITY

WHEREAS, The Reclamation Board, pursuant to Division 5 of the Water Code, is charged with a number of powers, duties, purposes, responsibilities and jurisdiction for flood control and reclamation within the Central Valley; and

WHEREAS, a major part of The Reclamation Board's work is performed by personnel of the Department of Water Resources; and

WHEREAS, the flood control program of The Reclamation Board is vital to the safety and well being of the people of the Central Valley and the economic health of the State as a whole; and

WHEREAS, partial delegation of the Board's authority is necessary in order to allow staff work to proceed as authorized by Board regulations; and

WHEREAS, the General Manager is responsible to the Board for the operational conduct of the flood control program in accordance with the policies and procedures of the Board.

NOW, THEREFORE, LET IT BE RESOLVED, THAT:

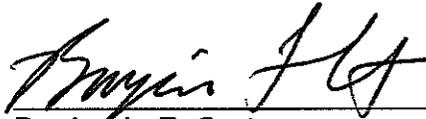
1. All previous delegations of authority to the General Manager are hereby rescinded;
2. Authorities of the Board not delegated below are reserved to the Board;
3. The following delegations of Board authority are hereby made to the General Manager with the authority to re-delegate:
 - A. Communication with the Director of Water Resources or designee in carrying out the delegations granted herein regarding the staff assistance to the Board provided by the Department of Water Resources. It is the intent of the Board that the General Manager perform liaison between the Board and the Department and will make such recommendations to the Board as deemed advisable on matters transmitted to the Board by the Department. It is further the intent of the Board that the General Manager will not directly supervise the work done by the Department of Water Resources but will transmit Board policies and directives to the Director of Water Resources or designee; and
 - B. Interpretation of Board policy. If clarification of such policy is required, the matter shall be brought before the Board; and

- C. Certification of right of way to the Corps of Engineers; and
- D. Scheduling of work with the Corps of Engineers, in coordination with the Department of Water Resources, to meet program commitments within budgetary limitations; and
- E. Approval of plans and specifications for all construction work accomplished on behalf of the Board; and
- F. Execution of contracts involving services for the Board, including services contracts, relocation agreements, joint use agreements, consents to common use, and conveyance of Board interests in real property after approval by the Board; and
- G. Execution of agreements involving flood emergency work; and
- H. Consent to and execution of written acceptance of deeds and grants conveying interests in real property to the Board required for projects approved by the Board; and
- I. Approval of procedures to effectuate Board policy in the most efficient and economical manner. This will be accomplished jointly with the Department of Water Resources in the areas of its assigned responsibilities; and
- J. The authority to direct the initiation of an initial study, negative declaration, or environmental impact report; and
- K. The authority to establish or waive fees and deposits for the preparation of initial studies, negative declarations, environmental impact reports, and other environmental analyses; and
- L. The authority to make any environmental determination required for the issuance of a temporary encroachment permit; and
- M. The authority to make environmental determinations required to process a transfer of an encroachment permit from one applicant to another; where:
 - (1) A facility has been completed under an existing permit and no changes are contemplated by the new owner; or
 - (2) A facility is partially completed and there will be no change in original plans; or
 - (3) No work has been done under the original plan and the new owner will follow that plan; and
- N. The authority to issue a license for encroachments onto Board land where the General Manager has the authority to approve the encroachment.

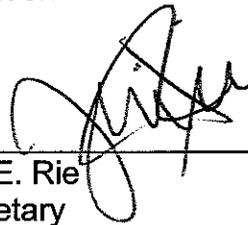
4. The General Manager shall be authorized to issue all permits, approve all projects, and exercise any other authority of the Board in furtherance of any work undertaken by the State in response to a declaration of a State of Emergency by the Governor pursuant to the authority of the California Emergency Services Act where the delay necessitated by bringing the matter before the Board would interfere with the timely completion of emergency work.
5. The General Manager shall report at each Board meeting on the exercise of any authority delegated by this Resolution.

DATED: April 21, 2006

THE RECLAMATION BOARD OF THE
STATE OF CALIFORNIA

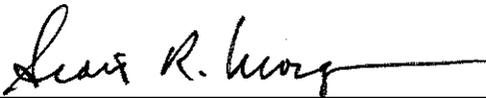


Benjamin F. Carter
President



Teri E. Rie
Secretary

APPROVED AS TO LEGAL
FORM AND SUFFICIENCY



Scott R. Morgan
Counsel

STATE OF CALIFORNIA
THE RESOURCES AGENCY
CENTRAL VALLEY FLOOD PROTECTION BOARD

RESOLUTION NO. 2012-17

DELEGATION OF AUTHORITY
TO THE EXECUTIVE OFFICER
FOR PERMITTING AND ENFORCEMENT

WHEREAS, the Central Valley Flood Protection Board (Board) is granted specific powers, duties, and authorities in the California Water Code to carry out the States primary and supreme interest to protect people and property from flooding along the Sacramento and San Joaquin Rivers, their tributaries, by-passes, overflow channels and basins; and

WHEREAS, the Board has established and does enforce standards for levees, channels, and other flood control works of an authorized project or an adopted plan, including but not limited to standards for encroachment, construction, vegetation and erosion control measures; and

WHEREAS, the California Water Code requires that every plan of reclamation, flood control, drainage, improvement, dredging or work, that includes the construction, enlargement, revetment or alteration of any levee, embankment, canal or other excavation near the banks of the Sacramento or San Joaquin Rivers or any of their tributaries, or upon any adjacent land, or within any overflow basins, or upon any land susceptible to overflow, shall be approved by the Board before construction is commenced; and

WHEREAS, the Board's permitting regulations are provided in the California Code of Regulations (CCR), Title 23, Division 1, which are used to consider applications for every proposal or plan of work, including the placement, construction, reconstruction, removal, or abandonment of any landscaping, culvert, bridge, conduit, fence, projection, fill, embankment, building, structure, obstruction, encroachment or works of any kind, and including the planting, excavation, or removal of vegetation, and any repair or maintenance that involves cutting into the levee, wholly or in part within any area for which there is an adopted plan of flood control; and

WHEREAS, the Board's enforcement regulations are also provided in the California Code of Regulations (CCR), Title 23, Division 1 to require permits and enforce standards for the erection, maintenance, and operation of levees, channels, and other flood control works within its jurisdiction, including, but not limited to, standards for encroachments, construction, vegetation, and erosion control measures. In addition, the Board has enforcement authority to issue Cease and Desist Orders, the violation of which may subject the violator to fines or penalties; and

WHEREAS, California Water Code section 8610.5 (a)(4) states “The Board may delegate approval of permits for encroachments that will not affect any element of the State Plan of Flood Control to the executive officer”; and

WHEREAS, California Water Code section 8709.5(a) states that the Board may delegate authority to the Executive Officer to issue cease and desist orders under certain circumstances; and

WHEREAS, California Water Code section 8709.4 (c) states the Board may delegate authority to the Executive Officer to take action to remove or modify encroachments on levees, channels, and other flood control works; and

WHEREAS, the February 2012 publication of the California Code of Regulations Title 23 Division I, Section 5 defines the types of encroachments, when in compliance with Title 23 and the Board’s obligations to the U.S. Army Corps of Engineers, that will not significantly affect any element of the State Plan of Flood Control or other adopted plan of flood control and are thus delegated to the Executive Officer for review and approval; and

WHEREAS, the February 2012 publication of the California Code of Regulations Title 23 Division I, Article 4 defines the enforcement actions that may be taken by the Executive Officer including issuing notices of violation and cease and desist orders subject to conditions which are “necessary to avoid an unreasonable impact on public safety”; and

NOW, THEREFORE, BE IT RESOLVED THAT,

1. All previous delegations of duties and authorities to the Executive Officer listed in Resolution No. 06-08 General Delegation of Authority remain in effect;
2. The following additional delegations of duties and authorities are hereby made to the Executive Officer with the authority to re-delegate:
 - a. The delegations listed in the California Code of Regulations, Title 23, Division 1, Article 2, Section 5, Delegations; and
 - b. The enforcement duties and authorities listed in the California Code of Regulations, Title 23, Division 1, Article 4, Enforcement Actions; and
 - c. The authority to issue permits under this resolution is limited to permits that will not affect the State Plan of Flood Control as defined in the California Code of Regulations, Title 23, Division 1, Section 5 (b) without holding an evidentiary hearing or obtaining Board approval. This delegation is further conditioned upon the Executive Officer publicly posting proposed permit actions on the Board’s website and periodically reporting acted permits to the Board per Sections 5(c) and 5(d).

PASSED AND ADOPTED by vote of the Board on _____, 2012

William Edgar
President

Jane Dolan
Secretary