**SECTION 1.**

*Section 8579 is added to the Water Code, to read:*

8579

(a) Any aggrieved person shall have a right to seek judicial review of any permit or enforcement order issued by the board by filing a petition for a writ of mandate in accordance with Section 1094.5 of the Code of Civil Procedure, within 30 days after the decision or action has become final.

(b) For purposes of this section, an "aggrieved person" means any person or public agency that, in person or through a representative, appeared at a public hearing of the board in connection with the decision or action appealed, or that, by other appropriate means before the decision, informed the board of the nature of their concerns.

**SEC. 2.**

*Article 6 (commencing with Section 8700) of Chapter 3 of Part 4 of Division 5 of the Water Code is repealed.*

**SEC. 3.**

*Article 6 (commencing with Section 8700) is added to Chapter 3 of Part 4 of Division 5 of the Water Code, to read:*

**Article 6. Enforcement of Unauthorized Activities and Encroachments**

**8700.**

(a) It is unlawful for any person or public agency to interfere with, obstruct the performance, maintenance, or operation of, or otherwise take actions that may adversely affect facilities of the State Plan of Flood Control, designated floodways, or streams that are regulated by the board.

(b) The board, executive officer, department, and local agencies that operate and maintain facilities and works on behalf of the board shall have the authority, as set forth in this article, to take administrative or civil enforcement actions to abate and remedy any interference or potential interference proscribed in subdivision (a).

**8701.**

(a) If the board or the executive officer determines that any person or public agency has undertaken, is threatening to undertake, or maintains any encroachment, flood system improvement, or activity in violation of this part, the board or the executive officer may issue a

notice of violation to the person or public agency responsible for the encroachment, flood system improvement, or activity.

(b) The department or a local agency may issue a notice of violation pursuant to subdivision (a) for facilities within the board's jurisdiction that the department or local agency operates and maintains if the board delegates the agency that authority. This subdivision shall not require the department or local agency to accept that delegation of authority.

(c) A notice of violation shall include all of the following:

(1) A statement describing the activity, failure to act, flood system improvement, or encroachment that constitutes a violation of this article, including the sections of this part or board regulations that are being violated.

(2) A statement of whether the activity, flood system improvement, or encroachment may be eligible for a permit from the board.

(3) The corrective actions that shall be taken within a specified time period.

(4) Whether the person or public agency may correct the violation without obtaining prior approval from the board or executive officer, or whether prior approval from the board or executive officer must be obtained prior to taking a corrective action.

(5) A statement that the notice of violation shall be referred to the board and that the failure to take the requested actions within the time specified may subject the person or public agency to a cease and desist order and the imposition of further remedial and enforcement actions, including, but not limited to, correction of the violation by the board at the person's or public agency's expense and penalties.

(6) The name, address, and telephone number of the state or issuing agency that may be contacted for further information.

(d) The notice of violation shall be served in accordance with Section 8703 and a copy transmitted to the executive officer within five calendar days of its issuance. The board or the executive officer may amend the notice of violation, and, once served in accordance with Section 8703, the amended notice of violation shall supersede any notice of violation previously issued for the same violation.

**8701.2.**

(a) If the board or executive officer determines that any person or public agency has failed to adequately respond to a notice of violation, the board or executive officer may issue an order directing that the person or public agency to whom the notice of violation was issued to cease and desist. ~~Nothing shall prevent the board or executive officer from issuing a cease and desist order in cases where it deems a notice of violation would not to be in the best interest of the state.~~

*(b) Nothing shall prevent the board or executive officer from issuing a cease and desist order without first issuing a notice of violation in cases where it deems a notice of violation would not be in the best interest of the state. In the event the board issues a cease and desist order without fist issuing a notice of violation, the cease and desist order shall contain the information required in 8701(c).*

~~(b)~~ *(c)* A cease and desist order shall do all of the following:

(1) Include a copy of the notice of violation.

(2) Be effective upon its issuance and served immediately pursuant to Section 8703.

(3) Require that the corrective actions described in the notice of violation be completed within a specified time period or the person or public agency shall be subject to an enforcement order pursuant to Section 8701.4.

(4) Provide a date, time, and location of a public meeting before the board at which the person~~, entity,~~ or public agency may appear to contest the cease and desist order.

~~(c)~~ *(d)* The meeting noticed pursuant to paragraph (4) of subdivision (b) shall be consistent with all of the following:

(1) The meeting shall be scheduled *to occur* at least 30 days after issuance of the cease and desist order and shall be held pursuant to the provisions of this part and regulations adopted by the board.

(2) At the meeting, the board may affirm, amend, modify, stay, or rescind the cease and desist order.

(3) If a person or public agency subject to a cease and desist order fails to appear at the meeting, the cease and desist order may be approved by default.

**8701.4.**

(a) If the board or executive officer determines that any person or public agency has failed to correct a violation as outlined in a cease and desist order, the board shall hold an enforcement hearing to consider the issuance of an enforcement order.

(b) The enforcement hearing shall comply with all of the following:

(1) Notice of the hearing*, pursuant to Section 8703,* shall be provided at least 30 days before the hearing is scheduled *to occur* ~~pursuant to Section 8703~~, unless it is determined that the public interest necessitates a shorter notice period.

(2) Notice of the hearing shall include a proposed enforcement order, including any proposed administrative penalties.

(3) The hearing shall be held pursuant to the provisions of this part and regulations adopted by the board.

(4) If the person or public agency subject to the cease and desist order fails to appear at the hearing, the right to a hearing will be deemed waived.

(c) At the conclusion of the hearing, the board may approve, amend, or reject the proposed enforcement order and thereby take any and all of the following actions:

(1) Order the removal, modification, or abatement of the encroachment, flood system improvement, or activity causing a violation of this part.

(2) Order the restoration of the site.

(3) Impose and require the payment of administrative penalties as set forth in Section 8704.

*(4) Order the recording of the Enforcement Order with the County Recorders' Office against the property associated with the violation.*

~~(4)~~ *(5)* Initiate a civil action in the name of the state for mandamus, injunction, civil penalties, or other appropriate remedy authorized by law.

~~(5)~~ *(6)* Order any other actions or conditions as the board may determine are necessary to resolve the violation and ensure compliance with this part.

(d) The enforcement order shall state any necessary findings and shall be served immediately pursuant to Section 8703.

(e) A person~~, entity,~~ or public agency against which the board has issued an enforcement order may seek judicial review of the enforcement order pursuant to Section 8579. The enforcement order shall be deemed effective upon issuance.

(f) If the board orders removal*, modification, abatement, or* ~~and~~ restoration pursuant to this part, the board, its contractor, or its designee may conduct the *work* ~~removal and restoration~~, the costs of which shall be collected from the responsible person or public agency by whatever legal remedy is available, including, but not limited to, the placement of a lien on the property owned by the person or public agency responsible for the violation pursuant to Section 8704.2. Removal*, modification, abatement,* or restoration actions shall not be taken by the board until after the time for judicial review has passed.

*(g) If the board orders the enforcement order to be recorded with the county recorder's office, the Executive Officer shall issue a certificate of abatement to the person or public agency against whose property the enforcement order was recorded when the enforcement action has been fully resolved, including the payment of any costs and penalties. The person or public agency may, at the owner's expense, record the certificate with the county recorder's office.*

~~(g)~~ *(h)* This section does not authorize the issuance of an enforcement order as to any lawful activity undertaken by a public agency pursuant to Section 8708.

**8702.**

(a) The board, following notice and opportunity for a hearing, may order the removal or modification of an encroachment that was previously issued a permit by the board if the board makes one of the following findings based on substantial evidence:

(1) The encroachment presents a threat to the structural integrity of the levee, channel, flood control work, or other facility of the State Plan of Flood Control.

(2) The encroachment impairs the functional capability of the levee, channel, flood control work, or other facility of the State Plan of Flood Control to fulfill its particular intended role in the overall flood control plan.

(3) The encroachment is not in conformance with state law, board regulations, or, in the case of facilities of the State Plan of Flood Control, the standards and regulations of the Secretary of the Army.

(b) Routine maintenance by the board, the executive officer, *the department,* or local agencies that operate and maintain facilities and works on behalf of the board that includes the removal or modification of abandoned property, fences, gates, and vegetation on a levee or other flood control structure shall not be subject to this section.

(c) The removal *or modification* of previously permitted encroachments shall not be subject to administrative or civil penalties pursuant to Section 8704 or 8704.1.

*(d) If the board orders the removal or modification of a previously permitted encroachment, the permit for the encroachment shall be modified or revoked accordingly.*

**8703.**

Notice and service required by this article shall be provided to the person or public agency believed to be responsible for the violation and the owner of the property on which the violation occurred or is threatened to occur by one of the following means:

(a) Hand delivery.

(b) Certified mail.

(c) If the person or agency cannot be reached or reasonably notified pursuant to subdivision (a) or (b), by placing a copy of the notice or order on the encroachment or property.

**8704.**

(a) Civil penalties may be imposed by a court of competent jurisdiction against any person or public agency that undertakes an activity, flood system improvement, or encroachment that is in violation of this part or that is inconsistent with any permit, ~~or~~ cease and desist order *or, enforcement order* previously issued by the board or executive officer in an amount not less than five hundred dollars ($500) and not greater than thirty thousand dollars ($30,000).

(b) In addition to any other penalties, civil penalties may be imposed by a court of competent jurisdiction against any person or public agency that intentionally and knowingly undertakes an activity, flood system improvement, or encroachment that is in violation of this part or that is inconsistent with any permit, ~~or~~ cease and desist order*, or enforcement order* previously issued by the board or executive officer in an amount that shall not be less than one thousand dollars ($1,000) or more than fifteen thousand dollars ($15,000) per day for each day in which the ~~encroachment~~ *violation* persists.

(c) In determining the amount of liability pursuant to subdivisions (a) and (b), the following factors shall be considered:

(1) The nature, circumstance, extent, and gravity of the violation.

(2) Whether the violation is susceptible to removal*, modification, abatement,* restoration or other remedial measures.

(3) Whether the function of the levee, channel, or other flood control work is affected by the violation.

(4) The cost to the state of bringing the action.

(5) With respect to the person or public agency responsible for the violation, any voluntary ~~restoration or~~ remedial measures undertaken, any prior history of violations, the degree of culpability, economic profits, if any, resulting from, or expected to result as a consequence of, the violation, and other matters ~~the board~~ deem~~s~~*ed* relevant.

(d) Civil penalties may be imposed by a court of competent jurisdiction against any person~~, entity,~~ or public agency that intentionally or negligently violates any cease and desist order issued, reissued, or amended by the board, or any ~~restoration~~ *enforcement* order issued, reissued, or amended by the board in an amount that shall not exceed six thousand dollars ($6,000) for each day in which that violation persists. Any actual penalty imposed shall be reasonably proportionate to the damage suffered as a consequence of the violation.

**8704.1.**

(a) Administrative penalties may be imposed by the board in the same manner as civil penalties described in Section 8704, upon an enforcement hearing and issuance of an enforcement order pursuant to Section 8701.4, but shall not be less than five hundred dollars ($500) or exceed fifty thousand dollars ($50,000) for a single violation.

(b) In imposing penalties, the board shall express its rationale for the amount and specifically address the factors listed under subdivision (c) of Section 8704.

(c) Any penalties imposed shall be paid within 60 days.

(d) A person or public agency shall not be subject to both civil and administrative penalties for the same violation.

(e) After the time for judicial review pursuant to Section 8579 has passed, the board may apply to the clerk of the appropriate court in the county in which the administrative penalties were imposed for a judgment to collect the penalties assessed. The application, which shall include a certified copy of the board action, constitutes a sufficient showing to warrant issuance of the judgment. The clerk shall enter judgment immediately in conformity with the application. The judgment so entered has the same force and effect, and is subject to all the provisions of law relating to, a judgment in a civil action and may be enforced in the same manner as any other judgment of the court in which it is entered.

**8704.2.**

(a) Pursuant to subdivision (f) of Section 8701.4, the board or the board's designee shall have the authority to record a lien with the county clerk in the county of this state where the person's or agency's property responsible for the violation is located, to recover any and all of the following:

(1) Costs incurred in abating, removing, and restoring a violation, including, but not limited to, costs incurred in seeking *modification,* removal, abatement, ~~and~~ *or* restoration pursuant to this part.

(2) Costs incurred in the summary abatement of emergencies.

(3) Attorney's fees associated with actions to enforce this part.

(b) A lien recorded pursuant to this section shall have the same force, effect, and priority as a judgment lien.

(c) Before recording a lien, the board shall provide notice and an opportunity for a hearing to contest the amount of the lien.

(1) Notice shall be provided at least 20 days before the hearing pursuant to Section 8703.

(2) The hearing required by this section may be satisfied by an enforcement order hearing pursuant to Section 8701.4 or, in the summary abatement of emergencies, a hearing pursuant to Section 8708.

**8704.4.**

The remedies provided by this article are not exclusive of, but shall be concurrent with and in addition to, any other remedy, penalty, or sanction that may exist by law, civil or criminal. The board may enforce compliance with the provisions of this article by mandamus, mandatory injunction, or by any other appropriate remedy authorized by law. The action or proceeding may be commenced and maintained by the board in the name of the state.

**8705.**

The Flood Risk Management Fund is hereby established in the State Treasury. All funds received from penalties pursuant to this article shall be paid into the fund. Upon appropriation by the Legislature, the moneys in the fund shall be expended by the board to carry out enforcement pursuant to this part, including the costs of the *modification, removal,* abatement *or* ~~and~~ restoration of violations and ~~recent~~ *related* litigation.

**8706.**

The board may maintain actions in the name of the state to compel by injunction the owner or owners of any bridge, trestle, wire line, viaduct, embankment, or other structure or obstruction that shall be intersected, traversed, or crossed by any bypass, drainage canal, channel, or overflow channel to construct or alter any structure in order to offer a minimum of obstruction to the free flow of water. In the case of existing works, the board may compel the removal or alteration of structures or obstructions that impede the free flow of water.

**8706.5.**

Any activity that does or may interfere with, obstruct the performance, maintenance, or operation of, or otherwise adversely affect facilities of the State Plan of Flood Control, designated floodways, or streams that are regulated by the board constitutes a public nuisance, and the board may commence and maintain a suit in the name of the people of the state for the prevention or abatement of that nuisance.

**8707.**

If the board or Attorney General prevails in a civil action to enforce this part, or if a local agency prevails in a civil action to seek abatement costs under subdivision (b) of Section 8708 or *modification,* removal, *abatement* or restoration costs as the board's designee under subdivision (f) of Section 8701.4, the board, Attorney General, or local agency shall be awarded attorney's fees and costs, including, but not limited to, any fees and costs incurred by its agents.

**8708.**

(a) Nothing in this article shall be construed to prevent the department, the board, the executive officer, or a levee-maintaining agency from taking any action to prevent an imminent failure of a levee, channel, floodway, stream bank, or flood control feature, or other emergency action necessary to protect the public welfare.

(b) To the extent emergency action is required that involves the removal, modification, or abatement of an encroachment, flood system improvement, or activity maintained by an individual~~, entity,~~ or public agency, the individual~~, entity,~~ or public agency may request a hearing before the board within 30 days after the action has been commenced.

(c) After a public hearing, by request or by its own motion, the entity that has carried out the abatement functions pursuant to this section may seek reimbursement of its abatement costs and may pursue any legal remedies available to recover its costs, including imposing a lien pursuant to Section 8704.2.

**8709.**

The board shall adopt emergency regulations necessary to implement this article in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of emergency regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare.

**SEC. 4.**

Section 8732 of the Water Code is amended to read:

**8732.**

The board may hold a hearing or partial hearing before a committee of one or more members of the board, before a qualified neutral hearing officer designated by the board president, or before the executive officer or chief engineer of the board, at any place within the state.