

**CENTRAL VALLEY FLOOD PROTECTION BOARD**

3310 El Camino Ave., Rm. 151  
SACRAMENTO, CA 95821  
(916) 574-0609 FAX: (916) 574-0682  
PERMITS: (916) 574-2380 FAX: (916) 574-0682



December 4, 2013

The Honorable John Laird  
Secretary  
California Natural Resources Agency  
1416 Ninth Street, Suite 1311  
Sacramento, California 95814

Dear Secretary Laird:

I am writing you this letter to request your signature on the enclosed Form 399, *Economic and Fiscal Impact Statement* which supports proposed rulemaking changes to Division 1 of Title 23 of the California Code of Regulations.

The Central Valley Flood Protection Board (Board) is proposing changes to Title 23, Division 1 of the California Code of Regulations to incorporate the statues authorized by Senate Bill 753 which will take effect on January 1, 2014. These proposed regulations expand the Board's enforcement authority to include the authority to issue administrative fines for code violations. The regulatory changes also allow the Board to delegate the authority to issue notices of violation to the Department of Water Resources and to local levee maintaining agencies. These changes will improve the Boards ability to preserve the integrity of the flood protection system of levees and floodways.

The Central Valley Flood Protection Board has made an initial determination that the adoption of these regulations will not have any significant statewide adverse economic impacts directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Thank you for your consideration in this matter. Please return this package to us for forwarding to the Department of Finance. If you have any questions or need additional information please call me at (916) 574-0609, or your staff may contact Curt Taras, Board Supervising Engineer at (916) 574-0684 or [curt.taras@water.ca.gov](mailto:curt.taras@water.ca.gov).

Sincerely,

  
Jay S. Punia  
Executive Officer

Enclosures

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-08)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only	
NOTICE	REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY Central Valley Flood Protection Board	AGENCY FILE NUMBER (if any)
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A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Title 23 Waters, Division 1, Central Valley Flood Protection Board	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)
ADOPT 13.2, 29, 30
AMEND 13, 13.1, 20, 21, 22, 23, 24, 25, 26, 27, 28
TITLE(S) Title 23 Division 1
REPEAL

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Effective 30th day after filing with Secretary of State <input type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> §100 Changes Without Regulatory Effect <input checked="" type="checkbox"/> Effective other (Specify) <u>January 1, 2014</u>

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) _____

7. CONTACT PERSON Curt Taras, PE, MSCE	TELEPHONE NUMBER 1-916-574-0684	FAX NUMBER (Optional) 1-916-574-0682	E-MAIL ADDRESS (Optional) curt.taras@water.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Jay S. Punia</i>	DATE <i>12/4/2013</i>
TYPED NAME AND TITLE OF SIGNATORY Jay S. Punia, Executive Officer, Central Valley Flood Protection Board	

**ECONOMIC AND FISCAL IMPACT STATEMENT  
(REGULATIONS AND ORDERS)**

STD. 399 (Rev. 2-98)

See SAM Sections 6600 - 6680 for Instructions and Code Citations

DEPARTMENT NAME Central Valley Flood Protection Board	CONTACT PERSON Curt Taras, PE., Supervising Engineer, WR	TELEPHONE NUMBER (916) 574-0684
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Title 23 Amendments Related to SB 753 and Enforcement Updates		NOTICE FILE NUMBER Z

**ECONOMIC IMPACT STATEMENT****A. ESTIMATED PRIVATE SECTOR COST IMPACTS** (Include calculations and assumptions in the rulemaking record.)

1. Check the appropriate box(es) below to indicate whether this regulation:

- |   |  |
|---|--|
| <input type="checkbox"/> a. Impacts businesses and/or employees | <input type="checkbox"/> e. Imposes reporting requirements   |
| <input type="checkbox"/> b. Impacts small businesses            | <input type="checkbox"/> f. Imposes prescriptive instead of performance standards  |
| <input type="checkbox"/> c. Impacts jobs or occupations         | <input type="checkbox"/> g. Impacts individuals  |
| <input type="checkbox"/> d. Impacts California competitiveness  | <input checked="" type="checkbox"/> h. None of the above (Explain below. Complete the Fiscal Impact Statement as appropriate.) |

h. (cont.) \_\_\_\_\_

(If any box in Items 1 a through g is checked, complete this Economic Impact Statement.)

2. Enter the total number of businesses impacted: \_\_\_\_\_ Describe the types of businesses (Include nonprofits): \_\_\_\_\_

Enter the number or percentage of total businesses impacted that are small businesses: \_\_\_\_\_

3. Enter the number of businesses that will be created: \_\_\_\_\_ eliminated: \_\_\_\_\_

Explain: \_\_\_\_\_

4. Indicate the geographic extent of impacts:  Statewide  Local or regional (list areas): California's Central Valley including all tributaries and distributaries of the Sacramento and San Joaquin Rivers and Tulare and Buena Vista basins.

5. Enter the number of jobs created: \_\_\_\_\_ or eliminated: \_\_\_\_\_ Describe the types of jobs or occupations impacted: \_\_\_\_\_

6. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here?

 Yes  No If yes, explain briefly: \_\_\_\_\_**B. ESTIMATED COSTS** (Include calculations and assumptions in the rulemaking record.)1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ 0

a. Initial costs for a small business: \$ \_\_\_\_\_ Annual ongoing costs: \$ \_\_\_\_\_ Years: \_\_\_\_\_

b. Initial costs for a typical business: \$ \_\_\_\_\_ Annual ongoing costs: \$ \_\_\_\_\_ Years: \_\_\_\_\_

c. Initial costs for an individual: \$ \_\_\_\_\_ Annual ongoing costs: \$ \_\_\_\_\_ Years: \_\_\_\_\_

d. Describe other economic costs that may occur: \_\_\_\_\_

**ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 2-98)**

2. If multiple industries are impacted, enter the share of total costs for each industry: \_\_\_\_\_

3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. (Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.): \$ \_\_\_\_\_

4. Will this regulation directly impact housing costs?  Yes  No If yes, enter the annual dollar cost per housing unit: \$ \_\_\_\_\_ and the number of units: \_\_\_\_\_

5. Are there comparable Federal regulations?  Yes  No Explain the need for State regulation given the existence or absence of Federal regulations: The State of California regulates its flood control system on behalf of the U.S. Army Corps of Engineers.

Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$ \_\_\_\_\_

**C. ESTIMATED BENEFITS (Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)**

1. Briefly summarize the benefits that may result from this regulation and who will benefit: The proposed regulations will result in a net benefit to protect California jobs and small business from flood losses. Jobs are typically created in areas protected from flooding and eliminated in areas with a high risk of flooding and economic loss.

2. Are the benefits the result of:  specific statutory requirements, or  goals developed by the agency based on broad statutory authority? Explain: The benefit to the State will be better regulated flood control levees and floodways to protect life and property.

3. What are the total statewide benefits from this regulation over its lifetime? \$ \_\_\_\_\_

**D. ALTERNATIVES TO THE REGULATION (Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)**

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: These regulations are required by Senate Bill 753 which improved the enforcement authority of the Central Valley Flood Protection Board. Because the regulations are required by law an alternative was not considered.

2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:

Regulation:	Benefit: \$ _____	Cost: \$ _____
Alternative 1:	Benefit: \$ _____	Cost: \$ _____
Alternative 2:	Benefit: \$ _____	Cost: \$ _____

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: \_\_\_\_\_

4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs?  Yes  No Explain: The regulations being revised at this time do not implement technical standards.

**E. MAJOR REGULATIONS (Include calculations and assumptions in the rulemaking record.)**  
Cal/EPA boards, offices and departments are subject to the following additional requirements per Health and Safety Code section 57005.

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 2-98)

1. Will the estimated costs of this regulation to California business enterprises exceed \$10 million?  Yes No (If No, skip the rest of this section)

2. Briefly describe each equally as effective alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: \_\_\_\_\_

Alternative 2: \_\_\_\_\_

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation: \$ \_\_\_\_\_ Cost-effectiveness ratio: \_\_\_\_\_

Alternative 1: \$ \_\_\_\_\_ Cost-effectiveness ratio: \_\_\_\_\_

Alternative 2: \$ \_\_\_\_\_ Cost-effectiveness ratio: \_\_\_\_\_

FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT (Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years)

1. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year which are reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code. Funding for this reimbursement:

a. is provided in (Item \_\_\_\_\_, Budget Act of \_\_\_\_\_) or (Chapter \_\_\_\_\_, Statutes of \_\_\_\_\_)

b. will be requested in the \_\_\_\_\_ Governor's Budget for appropriation in Budget Act of \_\_\_\_\_  
(FISCAL YEAR)

2. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year which are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code because this regulation:

a. implements the Federal mandate contained in \_\_\_\_\_

b. implements the court mandate set forth by the \_\_\_\_\_  
court in the case of \_\_\_\_\_ vs. \_\_\_\_\_

c. implements a mandate of the people of this State expressed in their approval of Proposition No. \_\_\_\_\_ at the \_\_\_\_\_  
election; (DATE)

d. is issued only in response to a specific request from the \_\_\_\_\_  
\_\_\_\_\_, which is/are the only local entity(s) affected;

e. will be fully financed from the \_\_\_\_\_ authorized by Section \_\_\_\_\_  
(FEES, REVENUE, ETC.)  
\_\_\_\_\_ of the \_\_\_\_\_ Code;

f. provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each such unit.

3. Savings of approximately \$ \_\_\_\_\_ annually.

4. No additional costs or savings because this regulation makes only technical, non-substantive or clarifying changes to current law and regulations.

**ECONOMIC AND FISCAL IMPACT STATEMENT *cont.* (STD. 399, Rev. 2-98)**

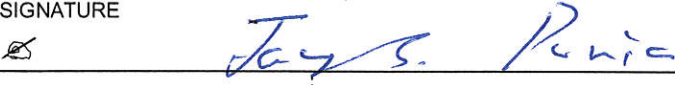


5. No fiscal impact exists because this regulation does not affect any local entity or program.
6. Other.

**B. FISCAL EFFECT ON STATE GOVERNMENT** *(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)*

1. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year. It is anticipated that State agencies will:
- a. be able to absorb these additional costs within their existing budgets and resources.
- b. request an increase in the currently authorized budget level for the \_\_\_\_\_ fiscal year.
2. Savings of approximately \$ \_\_\_\_\_ in the current State Fiscal Year.
3. No fiscal impact exists because this regulation does not affect any State agency or program.
4. Other.

**C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS** *(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)*

1. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year.
2. Savings of approximately \$ \_\_\_\_\_ in the current State Fiscal Year.
3. No fiscal impact exists because this regulation does not affect any federally funded State agency or program.
4. Other.

SIGNATURE		TITLE
		Executive Officer
AGENCY SECRETARY <sup>1</sup>		DATE
APPROVAL/CONCURRENCE		
DEPARTMENT OF FINANCE <sup>2</sup>	PROGRAM BUDGET MANAGER	DATE
APPROVAL/CONCURRENCE		

- The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6600-6680, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.
- Finance approval and signature is required when SAM sections 6600-6670 require completion of the Fiscal Impact Statement in the STD. 399.

**CENTRAL VALLEY FLOOD PROTECTION BOARD**

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SACRAMENTO, CA 95821  
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December 4, 2013

**NOTICE OF PROPOSED EMERGENCY REGULATIONS****Subject: Evidentiary Hearings, Enforcement Actions, and Reconsideration Regulations**

The Central Valley Flood Protection Board (Board) is proposing to adopt emergency regulations affecting its procedures for evidentiary hearings, enforcement actions, and reconsideration. The proposed emergency regulations are adopted into the California Code of Regulations, Title 23, Division 1 and implement changes to the California Water Code enacted by Senate Bill 753.

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law (OAL), the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency regulations to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6. Upon filing, OAL will have ten (10) calendar days within which to review and make a decision on the proposed emergency rulemaking. If approved, OAL will file the regulations with the Secretary of State, and the emergency regulations will become effective for one hundred and eighty (180) days. Within the 180-day effective period, the Central Valley Flood Protection Board will proceed with a regular rulemaking action, including a public comment period. The emergency regulations will remain in effect during this regular rulemaking action.

Attached to this Notice is the specific text of the Board's proposed emergency regulations and its Finding of Emergency.

You may also review the proposed regulations text and Finding of Emergency on the Board's website at the following address: <http://www.cvfpb.ca.gov>

If you have any questions regarding these proposed emergency regulations please contact Curt Taras, Board Supervising Engineer at (916) 574-0684 or [curt.taras@water.ca.gov](mailto:curt.taras@water.ca.gov).

**STATE OF CALIFORNIA  
CENTRAL VALLEY FLOOD PROTECTION BOARD  
3310 EL CAMINO AVENUE, ROOM 151  
SACRAMENTO, CA 95821**

**CALIFORNIA CODE OF REGULATIONS, TITLE 23, DIVISION 1  
REGULATORY CHANGES RELATED TO SENATE BILL 753**

**FINDING OF EMERGENCY**

The Executive Officer of the Central Valley Flood Protection Board (Board) finds that an emergency exists and that proposed emergency regulations are necessary to address a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, and general welfare.

Specific Facts Showing the Need for Immediate Action

The Central Valley Flood Protection Board regulates the flood control system that protects urban and rural communities from flooding. The State-Federal flood control system includes nearly 1600 miles of levees and 1300 miles of “designated floodways” to control flooding in the Central Valley. The Board has the responsibility of regulating encroachments that may affect the flood control system. Encroachments are facilities that are built on or in the flood control system. They can affect the system by blocking floodwaters or weakening levees if not constructed in accordance with regulations. Compliant encroachments are permitted and maintained in accordance with a permit. Violating encroachments are either unpermitted or not maintained in accordance with a permit. The Board has the authority to enforce the removal or modification of violating encroachments that do not comply with its regulations.

Recently, the United States Army Corps of Engineers has inspected the State-Federal flood control system and found there are hundreds of encroachments that do not comply with State and Federal Regulations. This has created a need for immediate action to enforce the removal or modification of the violating encroachments. To address this need for immediate action the State Legislature enacted Senate Bill 753 which strengthens the enforcement authority of the Board. In addition to revising the Board’s enforcement procedures, Senate Bill 753 grants the Board the authority to impose administrative penalties for code violations. By having the ability to order fines the Board can now be more effective in pursuing code enforcement.

As enacted by Senate Bill 753, Water Code § 8709 states, “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 that calls for the immediate action to avoid serious harm to the public peace, health, safety, or general welfare.”



## Authority and Reference Citations

Authority: Sections 8571 and 8709, Water Code

Reference: Sections 8700 – 8709 Water Code

## Informative Digest

Pursuant to the authority vested by California Water Code Sections 8579 and 8700-8709 (operative January 1, 2014) the purpose of the proposed rulemaking is to provide the Central Valley Flood Protection Board expanded authority to take enforcement actions to correct code violations on levees and in its flood control system. Water Code §§ 8701 thru 8703 detail the enforcement action process. This process begins with the issuance of a notice of violation followed by a cease and desist order, an enforcement hearing, and an enforcement order. Water Code §§ 8704 – 8704.1 describe the civil penalties and administrative penalties that may be imposed for violations. The law now grants the Board the authority to issue administrative penalties where previously the Board would have to go to court to seek civil penalties for violations. Water Code § 8704.2 allows the Board to record a lien on the property where the violation is located. The regulations are being amended to implement Water Code §§ 8579 and 8700-8709.

## Mandate on Local Agencies or School Districts

The proposed regulatory action would not impose a mandate on local agencies or school districts, with the exception that local flood control agencies may accept or decline the enforcement authority to issue notices of violation. This regulatory action does not require reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. No nondiscretionary costs or savings to local agencies or school districts will result from the proposed regulatory action.

## Costs or Savings to State Agencies

The proposed regulatory action will not result in any increase in costs to the state. No additional staff will be added to implement the program, and any additional staff time incurred as a result of the administrative hearing process would likely be offset by fewer court filings and reduced litigation costs.

**STATE OF CALIFORNIA  
CENTRAL VALLEY FLOOD PROTECTION BOARD  
3310 EL CAMINO AVENUE, RM. 151 (JOC)  
SACRAMENTO, CA 95821**

**Proposed Text of Regulations  
In Title 23, California Code of Regulations, Division 1  
Modify Article 3, Sections 13, and 13.1 to read as follows:**

**CALIFORNIA CODE OF REGULATIONS  
BARCLAY'S OFFICIAL CALIFORNIA CODE OF REGULATIONS**

**Title 23. Waters  
Division 1. Central Valley Flood Protection Board  
Chapter 1. Organization, Powers and Standards  
Article 3. Application Procedures**

**§ 13. Evidentiary Hearings.**

(a) Except where approval of permits has been delegated to the Executive Officer pursuant to section 5, an evidentiary hearing shall be held for any matter that requires the issuance of a permit.

(b) The requirement for an evidentiary hearing may be satisfied for permit applications by placing the matter on the board's consent calendar in accordance with Section 13.23.

(c) Evidentiary hearings shall be conducted pursuant to the procedures in Section 13.1.

(d) The applicant and other parties may request in writing that the board provide a copy of any document, not exempt from disclosure under the Public Records Act, beginning at Government Code section 6251, that is relevant to any proceeding. The board may charge a reasonable fee for each copy.

(e) The board may hold a hearing or a partial hearing at any place within the state on its own initiative or on the request of the applicant. All hearings must be open to the public. ~~The board President may designate a hearing officer.~~ The board may require the applicant to pay all overtime pay expenses incurred for any hearing not located in the County of Sacramento, if the hearing is moved from Sacramento at the request of the applicant.

~~(f) If the President designates a hearing officer, the hearing officer shall draft proposed findings and a proposed decision. The proposed findings and proposed decision, along with any evidence admitted at the hearing, shall be transmitted to the board as soon as reasonably possible following the hearing. The board shall consider the hearing officer's proposed findings and proposed decision at the next available board meeting following the hearing officer's proposed decision. The decision on the matter shall not become final until the board approves or rejects the~~

~~hearing officer's proposed decision. The board's review of the hearing officer's proposed decision does not re-open the hearing and no new evidence shall be submitted unless allowed by the President.~~

(~~g~~f) Written notice of the hearing shall be provided to the applicant at least ten (10) calendar days prior to the date of the hearing. The notice shall include the following:

- (1) The name and number assigned to the application, if any;
- (2) A description of the application and its proposed location;
- (3) The date, time, and place at which the hearing will be held;
- (4) A statement that the hearing will be governed by this Article, and that a copy of the governing procedures will be provided to the applicant upon request;
- (5) A statement that Chapter 5 of the Administrative Procedure Act (commencing with section 11500) shall not apply to the proceeding; and
- (6) A statement that if the applicant or any of the applicant's witnesses do not proficiently speak or understand English, the applicant may request language assistance by contacting the board and making such request within a reasonable amount of time prior to the hearing to allow appropriate arrangements to be made. The President or appointed hearing officer may direct the applicant to pay for the cost of the interpreter based upon an equitable consideration of all the circumstances of each case, such as the ability of the party in need of the interpreter to pay.

(~~h~~g) Applicants shall be notified of the staff recommendations on the application at least seven (7) calendar days prior to the hearing, unless this period is waived by the applicant. Adjacent landowners shall also be notified of staff recommendations at least seven (7) calendar days prior to the hearing if they have responded in writing to the notice sent pursuant to section 9(b) of this article. Protestants shall be notified of the staff recommendations at least seven (7) calendar days prior to the hearing.

(~~h~~i) Notice to an applicant's representative as designated on the completed permit application form shall constitute notice to the applicant.

(~~j~~i) The board President or appointed hearing officer may implement additional administrative procedures for the conduct of hearings and related proceedings.

(~~k~~j) For purposes of this section, minor alterations pursuant to section 6(e) and minor amendments to a previously issued permit shall not require an evidentiary hearing.

Note: Authority cited: Section 8571, Water Code; and Section 11400.20, Government Code.  
Reference: Sections 6253, 11125 and 11425.10, Government Code; and Sections 8710, 8730.2, 8731, 8732, 8732.5, 8734 and 8735, Water Code.

### **§ 13.1. Conduct and Order of Evidentiary Hearing Proceedings.**

(a) It is the purpose of this section to incorporate and implement the informal hearing procedures and Administrative Adjudication Bill of Rights in Chapter 4.5 of the Administrative Procedure

Act (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code to the extent consistent with the Water Code, which require notice and an opportunity to be heard, including the opportunity to present and rebut evidence. Chapter 5 of the Administrative Procedure Act (commencing with section 11500) does not apply to evidentiary hearings before the board or an appointed hearing officer.

(b) Evidentiary hearings shall be conducted in a manner deemed most suitable to ensure fundamental fairness to all parties concerned, and with a view toward securing all relevant information and material necessary to render a decision without unnecessary delay.

(c) Evidentiary hearings shall be held in open session. Unless the President ~~or appointed hearing officer~~ directs otherwise, the hearing shall proceed in the following order:

(1) The Executive Officer or his/her designee shall make a presentation to the board describing the application and summarizing the staff recommendation, including, for example, the proposed findings and written correspondence received prior to the hearing.

(2) The public testimony portion of the public hearing shall proceed in the following order:

(A) Persons or their representatives desiring to state their views on the application shall have the opportunity to do so as follows:

- (i) The applicant;
- (ii) Other persons supporting the application;
- (iii) Persons opposing the application;
- (iv) Other persons.

(B) The President ~~or appointed hearing officer~~ may allow rebuttal testimony by the applicant.

(C) The Executive Officer or his/her designee may respond to and comment, as appropriate, on the testimony presented by any previous speaker.

(3) The President ~~or appointed hearing officer~~ may close the public testimony portion of the hearing when a reasonable opportunity to present all questions and points of view has been allowed.

(4) Board members ~~or the appointed hearing officer~~ may ask questions at any time following any person's presentation.

(5) At the conclusion of the public testimony portion of the public hearing, the Executive Officer or his/her designee may propose to change the staff recommendation or the board may propose to add, delete, or modify the conditions contained in the staff recommendation. The applicant and the Executive Officer or his/her designee shall have an opportunity to comment on any proposed change.

(6) The board shall vote on a permit application in accordance with Water Code section 8560. In the case of an appointed hearing officer, the hearing officer shall act on the application.

(d) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be considered if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. The President, ~~or appointed hearing officer~~ may take official notice of such facts as may be judicially noticed by the courts of this state. Unduly repetitious or irrelevant evidence shall be excluded upon order by the President or appointed hearing officer.

(e) The President ~~or appointed hearing officer~~ may establish reasonable time limits for presentations. The time limits shall be made known to all speakers prior to any hearing. The President or appointed hearing officer may require individuals to consolidate their comments to avoid repetition.

(f) In order for audio, visual, or audio-visual materials to be considered by the board, they must be submitted to staff in the course of review of the application or shown in full at the public hearing. The presentation of these materials shall occur within the time limit allocated to speakers.

(g) The applicant must submit all materials presented at the hearing to the Executive Officer or his/her designee for inclusion in the record of the proceeding. Any speaker who exhibits models or other large-sized materials as part of his or her presentation may satisfy this requirement by:

(1) submitting accurate reproductions or photographs of the models or other large materials and

(2) agreeing in writing to make such materials available to the board if necessary for any administrative or judicial proceeding. If written materials are submitted, the applicant shall bring a sufficient number of copies of all such materials to the hearing to allow members of the public to review the materials prior to the board's or hearing officer's decision.

(h) All decisions of the board relating to permit applications shall be accompanied by written conclusions setting forth the factual and legal basis of the decision based upon the record. The written conclusions shall include all elements identified in Water Code section 8610.5(c)(1)-(4).

(1) For purposes of this section, a resolution adopted by the board at the hearing shall be deemed to satisfy the requirement for written conclusions, including any modifications made to the resolution at the hearing.

(2) In addition, unless otherwise specified at the time of the vote, an action taken consistent with the staff recommendation shall be deemed to have been taken on the basis of, and to have adopted, the reasons, findings and conclusions set forth in the staff report, including any modifications made to the staff report at the hearing.

(i) If the board action is substantially different than that recommended in the staff report and/or the resolution, the board may direct staff to return at a subsequent board meeting with a revised resolution and/or proposed revised written conclusions that reflect the action of the board. Revised written conclusions may be placed on the consent calendar and do not re-open the hearing. Public comment is restricted to whether the revised written conclusions reflect the action of the board. Any proposed written conclusions shall only be effective if concurred in by at least four members of the board. Board members who were not present for the original vote may only vote on the revised written conclusions if they have familiarized themselves with the record of proceedings. If the board does not accept the revised resolution or proposed revised written conclusions submitted by the Executive Officer, the board can either make such changes as it determines are appropriate and adopt the findings at that meeting or direct the Executive Officer to prepare further proposed written conclusions and submit them to the board at the next meeting. The board's decision is deemed final at the time of the initial vote on the application, not the time that the revised written conclusions are adopted.

(j) If the applicant requests language assistance prior to the hearing, the board shall provide language assistance in accordance with Article 8 (commencing with Section 11435.05) of the Administrative Procedure Act. The President ~~or appointed hearing officer~~ may direct the applicant to pay for the cost of the interpreter. The determination whether to direct payment shall be based upon an equitable consideration of all the circumstances in each case, such as the ability of the applicant in need of the interpreter to pay. If the request for an interpreter is not made within a reasonable amount of time prior to the hearing to allow appropriate arrangements to be made, the hearing may be continued to a subsequent meeting and the applicant shall be deemed to have consented to such continuance.

(k) The board may vote to continue all or part of the hearing to a subsequent meeting. Notice of the subsequent hearing shall be distributed in accordance with Section 13 of these regulations. A continuance of part of a hearing does not reopen the entire hearing.

Note: Authority cited: Section 8571, Water Code; and Section 11400.20, Government Code.  
Reference: Section 11425.10, Government Code; and Section 8610.5, Water Code.

### §13.2 Evidentiary Hearings before a Hearing Officer or Committee

(a) The board President may designate a hearing officer or board committee to conduct evidentiary hearings.

(b) The provisions regarding evidentiary hearings provided for in Sections 13 and 13.1 of the regulations shall apply to hearings before an appointed hearing office or committee except that the term "board" or "Board President" shall refer to the "hearing officer or committee."

(c) At the conclusion of a hearing by a designated hearing officer or committee, the hearing officer or committee shall draft proposed findings and decision.

(1) The proposed findings and decision, along with any evidence admitted at the hearing, shall be transmitted to the board as soon as reasonably possible following the hearing. The board may only consider the proposed findings and decision on consent if there is no objection.

(2) The decision on the matter shall not become final until the board approves or rejects the hearing officer or committee's proposed decision. The board's review of the hearing officer or committee's proposed decision does not re-open the hearing and no new evidence shall be submitted unless allowed by the board President.

Note: Authority cited: Section 8571, Water Code; and Section 11400.20, Government Code. Reference: Section 11425.10, Government Code; and Sections 8610.5, 8732, Water Code.

### **§ 13.23. Consent Calendar.**

(a) Unless otherwise provided in this Article, the procedures set forth in Article 3 of these regulations pertaining to permit applications, including staff reports, staff recommendations, resolutions, and voting, shall apply to the consent calendar procedure.

(b) Any matter for which there are no speakers in opposition, including permit matters, may be placed on the board's consent calendar in accordance with Section 13.23, unless one of the following occurs to remove the item from the consent calendar:

- (1) Upon request by the applicant, any member of the public, or any board member;
- (2) When any interested party files a written protest conforming to the requirements of section 12 and requests a hearing;
- (3) When approval requires a variance to the board's standards;
- (4) Upon the board's own motion.

(c) All items included in the consent calendar shall be considered by the board in one action. Public testimony shall be deemed waived. If the item is not removed from the consent calendar and the consent calendar is approved, any recommended conditions contained in the staff report and resolution, if one is prepared, shall be deemed approved by the board.

(d) Consent calendar items shall only be voted on if the board accepts the staff recommendation as stated in the staff report with no substantial changes. Otherwise, the item must either be removed from the consent calendar for discussion and action at the same meeting or continued to a subsequent board meeting.

(e) If an item is removed from the consent calendar pursuant to (b) above, then the public shall have the right to present testimony and evidence in accordance with Section 13.1 of these regulations.

Note: Authority cited: Section 8571, Water Code; and Section 11400.20, Government Code.  
Reference: Section 11425.10, Government Code; and Section 8610.5, Water Code.



STATE OF CALIFORNIA  
CENTRAL VALLEY FLOOD PROTECTION BOARD  
3310 EL CAMINO AVENUE, RM. 151 (JOC)  
SACRAMENTO, CA 95821

Proposed Text of Regulations  
In Title 23, California Code of Regulations, Division 1  
Modify Article 4, Sections 20, 21, 22, 23, 24, 25, 26, and 27 to read as follows:

CALIFORNIA CODE OF REGULATIONS  
BARCLAY'S OFFICIAL CALIFORNIA CODE OF REGULATIONS

Title 23. Waters  
Division 1. Central Valley Flood Protection Board  
Chapter 1. Organization, Powers and Standards  
Article 4. Enforcement Actions

§ 20. Purpose and Authority.

(a) The board has the authority ~~pursuant to Water Code section 8710~~ 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 under Water Code sections 8709.5 and 8709.6 to issue Cease and Desist Orders, the violation of which may subject the violator to fines or penalties pursuant to Water Code section 8709.7.~~

(b) ~~Examples of enforcement actions available to the board include administrative and civil actions, such as the following:~~ In the event of a violation of the Water Code, the board's regulations adopted thereto, any permit issued by the board, or in the case of facilities of the State Plan of Flood Control, applicable federal law or regulations where the board has signed assurances with the U.S. Army Corps of Engineers that it will comply with such law and regulations, the board has the administrative authority to issue notices of violation, cease and desist orders, and enforcement orders that order, without limitation, the following:

- (1) ~~Notice of Violation~~ Removal, modification or abatement of a violation, at the violator's cost;
- (2) ~~Cease and Desist Order~~ Restoration;
- (3) ~~Restoration Order~~ Administrative penalties;
- (4) Permit revocation; or

(5) ~~The commencement of a civil lawsuit, including civil penalties~~ Recordation of an enforcement order or a lien with the county recorder's office.

(c) The board also has the authority to commence a civil lawsuit to, without limitation, abate a nuisance, or seek mandamus, an injunction, costs, attorney's fees, and civil penalties.

(d) Copies of any notices of violation, cease and desist orders, or enforcement orders issued by the board shall be provided to the entity that maintains the flood control facility and the appropriate state and federal levee inspector. Failure to provide copies shall not be grounds for invalidating any notice or order issued by the board.

Note: Authority cited: Section 8571, Water Code. Reference: Sections 8534, 8596, 8598, 8608, ~~8615, 8617,~~ 8700, 8701, 8701.2, 8701.4, 8702, 8704, 8704.1, 8704.2, 8704.4, 8706.5, and 8707, 8710, 8719 ~~8708, 8709, 8709.4, 8709.5, 8709.6, 8710, and 8719,~~ Water Code.

## **§ 21. Conduct Subject to Enforcement**

(a) An enforcement action may be preceded by an investigation that may include, but is not limited to, document review, site visits, interviews, and public agency input to determine if violations exist within the jurisdiction of the board. The investigation may be conducted by (i) board staff, or (ii) a local maintaining agency where authority has been delegated by the board to issue notices of violation, or (iii) the department where authority has been delegated by the board to issue notices of violation.

(b) Actions that may be subject to investigation and enforcement include, but are not limited to:

(1) Undertaking or threatening to undertake any activity that may encroach on levees, channels, or other flood control works under the jurisdiction of the board;

(2) Owning, undertaking, or maintaining any work in violation of or inconsistent with any condition of any permit previously issued by or subject to the jurisdiction of the board;  
or

(3) Any violation of any requirement in Part 4 of Division 5 of the Water Code, including but not limited to:

(i) Owning, undertaking, or maintaining any work that requires a permit or other approval from the board without securing such permit or approval;

(ii) Owning, undertaking, or maintaining any work in violation of Title 23, Division 1 of the California Code of Regulations; or

(iii) Owning, undertaking, or maintaining any work that is inconsistent with applicable federal law or regulations where the board has signed assurances with the U.S. Army Corps of Engineers that it will comply with such law and regulations.

Note: Authority cited: Section 8571, Water Code. Reference: Sections 8534, 8596, 8598, 8608, 8615, 8617, 8700, 8702, and 8710, Water Code.

## **§ 22. Settlement of Violations**

(a) Subject to subsection (c), at any point during the enforcement process, the board or the executive officer may negotiate a proposed resolution with the person or entity responsible for the violation.

(b) The board or executive officer may enter into an agreement tolling any applicable statute of limitations, as specified in the Code of Civil Procedure, pending conclusion of negotiations.

(c) Once the board has taken action on a cease and desist order, any settlement of the underlying violation shall be placed on the board's consent calendar pursuant to Section 13.3 of these regulations, for approval by the board.

Note: Authority cited: Section 8571, Water Code. Reference: Sections 8534, 8596, 8598, and 8700, Water Code.

## **§ 23. Delegation of Enforcement Authority.**

(a) The board may delegate to the department or to local agency that operates and maintains facilities and works on behalf of the board the authority to issue notices of violation for violations affecting a flood control facility operated and maintained by the department or local agency.

(b) The delegation of enforcement authority shall be made in writing in a delegation letter signed by the executive officer.

(c) The delegation shall be deemed effective only upon the local agency's or the department's acceptance of the delegation, evinced by its signature and return of the delegation letter to the Executive Officer.

(d) Any delegation pursuant to this section may be revoked by the board at a public hearing or relinquished by the department or local agency with ten (10) days written notice.

Note: Authority cited: Section 8571, Water Code. Reference: Sections 8534, 8598, 8700, and 8701, Water Code.

## **§ 24. Board Approval of Cease and Desist Orders**

(a) Any Cease and Desist Order issued by the Executive Officer shall provide a date, time, and location of a public meeting before the board at which time the person or public agency subject to the order may appear to contest the order.

(b) If the person or public agency subject to the order fails to appear, the board may approve issuance of the cease and desist order on its consent calendar pursuant to Section 13.3 of these regulations.

(c) The board's consideration of issuance of a cease and desist order is not an evidentiary hearing and the provisions of these regulations that apply to evidentiary hearings, sections 13 and 13.1 do not apply to the board's consideration of cease and desist orders. The board may within its discretion, but is not required to consider any new evidence presented at the meeting by the respondent.

Note: Authority cited: Section 8571, Water Code. Reference: Sections 8598, 8700, and 8701.2, Water Code.

#### **§ 25. Enforcement Order Hearing Procedures.**

Enforcement Order hearings shall be conducted pursuant to the evidentiary hearing procedures described in subsections (c)-(f) and (i) of section 13, section 13.1 and 13.2 of these regulations with the following changes:

(a) The "applicant" shall be referred to as the "respondent";

(b) The "application" shall be referred to as the "enforcement action";

(c) Except as provided in paragraph (d), original notice of the hearing shall be served on the respondent by certified mail or hand delivery at least thirty (30) calendar days prior to the hearing.

(d) In certain situations, the Executive Officer may determine that the public interest necessitates a shorter notice period such as, but not limited to, situations where the thirty-day notice would endanger public health and welfare. In these situations, less notice may be provided, but in all cases the original notice must be a minimum of ten (10) calendar days prior to the hearing.

(e) The notice shall contain the information required by section 13(f), describe the violation, identify any statute(s) or regulation(s) the respondent is alleged to have violated; and include a proposed enforcement order, which shall set forth the amount of proposed administrative penalties.

- (f) Any staff report the board intends to consider at the enforcement order hearing shall be provided to the respondent with the notice of the hearing.
- (g) The respondent may submit a written statement of defense to the Executive Officer at least fifteen (15) calendar days prior to the hearing. If abbreviated notice is provided pursuant to subsection (d) the respondent may submit a written statement to the Executive Officer at least three (3) days prior to the hearing.
- (h) If the board President appoints a hearing officer, the hearing officer shall be a board member. A hearing may also be held by a committee of the board appointed by the board President. If the hearing is held by a committee of the board, the committee shall follow the hearing officer procedures in section 13.2.
- (i) If the hearing is held before a hearing officer or committee of the board, the hearing officer or committee shall prepare the proposed findings and decision required by section 13.2(c) within thirty (30) calendar days of the conclusion of the hearing. The respondent shall be provided with a copy of the proposed findings and decision at least ten (10) calendar days prior to the board's consideration of the proposed decision.
- (j) The written conclusions required by section 13.1(h) need not include a discussion of the elements identified in Water Code section 8610.5(c)(1)-(4).
- (k) Cross-examination shall not be allowed unless deemed appropriate by the board, appointed hearing officer, or committee of the board.
- (l) At the conclusion of the hearing before the board, to comply with the requirement in section 13.1(h) that the board adopt written findings, the board may do any the following:
- (i) Immediately adopt all or part of the staff report or enforcement order; or
  - (ii) Amend the staff report or enforcement order as it deems appropriate for immediate adoption; or
  - (iii) Direct a board member, along with board legal counsel and independent support staff, to draft proposed findings and decision for adoption by the board at a subsequent meeting pursuant to section 13.1(i). The respondent shall be provided with a copy of the proposed revised enforcement order at least ten (10) calendar days prior to the board's consideration of the proposed findings and decision. The board's consideration of a proposed enforcement order at a subsequent meeting does not re-open the hearing and no new evidence will be permitted unless allowed by the board President. However, all parties shall be given an opportunity to present argument related to the proposed order.

Note: Authority cited: Section 8571, Water Code, and Section 11400.20, Government Code. Reference: Sections 6253, 11125, and 11425.10, Government Code; and Sections 8560, 8598, 8700, 8701.4, and 8732, Water Code.

**§ ~~21~~26. Maintenance Activities.**

(a) In the performance of maintenance activities as defined in section 4(~~uy~~), the department, local maintaining agency, or designated representatives of the board may remove unpermitted abandoned property that interferes with maintenance or inspections after notification by the Executive Officer as described in subsection (~~bc~~).

(b) Prior to any removal allowed under (~~ab~~), the Executive Officer shall notify the landowner or owner of the unpermitted abandoned property by one of the following methods: in person, phone, e-mail, or U.S. mail. If the landowner or owner of the abandoned property cannot be located after reasonable efforts, a notice may be posted on the property for a minimum of five (5) calendar days prior to removal. The posted notice shall be clearly visible, shall provide a board contact name, phone number, e-mail address, and mailing address, and shall state that the owner may contact the board to object to such removal. The notice shall also state the date ~~by which~~on or after removal will occur if no objection is made.

(c) If a timely objection is made, no removal shall take place until the Executive Officer has provided the objector a reasonable opportunity to present reasons why the items should not be removed. The Executive Officer shall provide a written decision, which may be reviewed by the board pursuant to section 110.

(d) For purposes of this section, “abandoned property” shall mean any structure, material, or object that appears to a reasonable person to have been discarded, cast aside, dumped, neglected, ~~unusable, dilapidated, or permanently vacated~~vacated, or left unoccupied. Examples of abandoned property may include, but are not limited to, the following: refuse, vegetation, pipelines, or structures such as stairs, fences, or boat docks that have fallen into a state of disrepair.

(e) Nothing in this section is intended to remove any authority already vested in the department or any local maintaining entity in the performance of maintenance activities.

Note: Authority cited: Section 8571, Water Code. Reference: Sections 8361, 8370, 8534, 8596, 8598, 8608, 8615, 8617, 8704, 8708, 8709, 8709.4, 8710, and 8719,8700, and 8704.4 Water Code.

**~~§ 22. Emergency Impairment Response Authority.~~**

~~(a) In addition to the emergency authority in section 17, the Executive Officer is delegated the authority to authorize or order the removal or modification of permitted or unpermitted encroachments on levees, channels, and other flood control works that present an imminent threat to public health and safety without prior notice, order, or hearing.~~

~~(b) The Executive Officer shall attempt to give the landowner or owner of the encroachment prior notice when possible, and shall only take such actions as are reasonably necessary to abate the immediate threat to public health and safety.~~

~~(c) The Executive Officer shall report any action taken pursuant to this section to the board at the first reasonably available opportunity.~~

~~Note: Authority cited: Section 8571, Water Code. Reference: Sections 8534, 8596, 8598, 8608, 8704, 8708, 8709, 8709.4, 8709.5, 8709.6, 8710, and 8719, Water Code.~~

### **§ 27. Emergency Action.**

(a) Except as set forth in this Section, the summary abatement of emergencies is not subject to the enforcement procedures set forth in this Article.

(b) In addition to the emergency authority in Section 17, the department, board, executive officer and local maintaining agencies may take emergency action to prevent an imminent failure of a levee, channel, floodway, stream bank, or flood control features, or other emergency action necessary to protect the public welfare.

(c) If the exercise of this authority includes the removal, modification or abatement of an encroachment on a flood system improvement or activity maintained by a person or a public agency, the person or public agency may request a hearing before the board within 30 days after the removal, modification, or abatement has commenced.

(d) The entity that carries out the emergency action may also request a hearing before the board within 30 days after the removal, modification, or abatement has commenced to seek the reimbursement of its abatement costs from the person or public agency maintaining the affected encroachment or activity.

(e) If, upon holding a hearing, the board orders the payment of abatement costs to the entity that has carried out the emergency action, that entity may pursue any legal remedies available to it or the board may use its legal remedies to recover the costs of abatement, including imposition of a lien.

(f) Any hearing pursuant to this section shall proceed in accordance with Section 25 of this article.

(g) Any entity removing or modifying property pursuant to this section shall attempt to give any landowners or owners of the property subject to modification or removal prior notice when possible, and shall only take such actions as are reasonably necessary to abate the immediate threat to public health and safety.

(h) Any actions taken pursuant to this section shall be reported to the Executive Officer or the board at the first reasonably available opportunity.

Note: Authority cited: Section 8571, Water Code. Reference: Sections 8534, 8598, 8708, and 8715, Water Code.

**~~§ 23. Notice of Violation.~~**

~~(a) An enforcement investigation may be conducted when board staff is aware of activities that may impair the flood control system, or any activity that may constitute a violation pursuant to subsection (b). An enforcement investigation may include, but is not limited to, document review, site visits, interviews, and public agency input to determine if violations under the jurisdiction of the board exist.~~

~~(b) If the Executive Officer believes that the results of an enforcement investigation so warrant, the Executive Officer may institute an administrative enforcement action pursuant to Water Code section 8709.5 by giving a Notice of Violation to the landowner, person, or public agency (referred to hereafter as the “respondent”) that is responsible for any activity described in Water Code section 8709.5(a), including but not limited to, the following:~~

~~(1) Undertaking or threatening to undertake any activity that may encroach on levees, channels, or other flood control works under the jurisdiction of the board;~~

~~(2) Owning, undertaking, or maintaining any work in violation of or inconsistent with any condition of any permit previously issued by or subject to the jurisdiction of the board; or~~

~~(3) Any violation of any requirement in Part 4 of Division 5 of the Water Code, including but not limited to:~~

~~(A) Owning, undertaking, or maintaining any work that requires a permit or other approval from the board without securing such permit or approval;~~

~~(B) Owning, undertaking, or maintaining any work in violation of Title 23, Division 1 of the California Code of Regulations; or~~

~~(C) Owning, undertaking, or maintaining any work that is inconsistent with applicable federal regulations where the board has signed assurances with the U.S. Army Corps of Engineers that it will comply with such regulations.~~



~~(c) The Notice of Violation shall be given in the manner set forth in Water Code section 8709.5(b) and shall state:~~

- ~~(1) A description of the work subject to enforcement;~~
- ~~(2) Any corrective action that the Executive Officer determines may be necessary to avoid an unreasonable impact on public safety. “Unreasonable impact on public safety” shall mean as defined in subsection (d), below;~~
- ~~(3) The deadline to complete corrective action or otherwise respond to the notice;~~
- ~~(4) Staff contact name, address, and phone number; and~~
- ~~(5) A statement alerting the respondent that the described work or activity shall immediately cease or the respondent may receive a Cease and Desist Order, the violation of which may subject the respondent to fines or penalties.~~

~~(d) File copies of the written confirmation or notice shall be provided to the local levee maintaining agency and the levee inspector. Failure to provide copies of the notice to the local maintaining agency and the levee inspector shall not be grounds for invalidating the Notice of Violation.~~

~~(e) “Unreasonable impact on public safety” shall mean a threat of structural failure of the levee, flooding, channel obstructions, floating debris which may constitute a public safety risk, or other adverse impact on any adopted plan of flood control. Conditions imposed in the Notice of Violation or Cease and Desist Order that are necessary to avoid an unreasonable impact on public safety may include, for example, removal of the encroachment, the addition of fill material, the erection of barricades, and/or the compliance with board standards and permit conditions.~~

~~(f) Upon request by the respondent, the Executive Officer or designee shall conduct a meeting or an inspection to determine if actions taken by the respondent are in compliance with a Notice of Violation. If the Executive Officer or designee determines that no further action is necessary or appropriate, the respondent shall be notified that the file is closed.~~

Note: Authority cited: Section 8571, Water Code. Reference: Sections 8534, 8596, 8598, 8608, 8704, 8708, 8709, 8709.4, 8709.5, 8709.6, 8710, and 8719, Water Code.

#### **§ 24. Cease and Desist Orders Issued by the Executive Officer.**

~~(a) The Executive Officer may issue a Cease and Desist Order pursuant to Water Code section 8709.5 if the Executive Officer determines that any of the criteria of section 23(b) have been met and the respondent fails to respond to the Notice of Violation in a satisfactory manner.~~

~~(b) "Satisfactory manner," as used in Water Code section 8709.5(b), shall mean a response which is made in the manner and within the deadline for compliance specified in the Notice of Violation, or within thirty (30) calendar days if no deadline is given, and that meets the following:~~

- ~~(1) Provides information sufficient to convince the Executive Officer that the activity specified in the notice does not meet the criteria of section 23(b);~~
- ~~(2) Provides information sufficient to convince the Executive Officer that the person or agency to whom the notice was directed is not the landowner and/or is not responsible for the violation; or~~
- ~~(3) Provides information sufficient to convince the Executive Officer that the respondent has complied with all conditions and directives of the Notice of Violation and that no further action is necessary or appropriate.~~

~~(e) The Cease and Desist Order shall specify the action that must be taken by the respondent, if any, which may include, but is not limited to:~~

- ~~(1) Removal of the work;~~
- ~~(2) Alteration of the work;~~
- ~~(3) Filing an application for a permit pursuant to this division;~~
- ~~(4) Other terms and conditions the Executive Officer may determine to be necessary to avoid an unreasonable impact on public safety, as defined in section 23, above, including but not limited to inspection by the board or its authorized representatives;~~
- ~~(5) An order that if the respondent does not comply with the decision within a specified amount of time, the board, local maintaining agency, authorized representatives of the board, or a contractor hired by the board may take abatement actions, such as physical removal, and the board may recover any costs incurred from the respondent;~~
- ~~(6) An order requiring the respondent to file data as requested by the board or its authorized representatives.~~

~~(d) Pursuant to Water Code section 8709.5, the Executive Officer does not have the authority to issue a Cease and Desist Order that does the following:~~

- ~~(1) Imposes conditions other than those necessary to avoid an unreasonable impact on public safety, as defined in section 23, above. If the order contains any valid conditions, the order and all valid conditions shall remain in full force and effect.~~

~~(2) Revokes a previously issued permit. Revocation hearings shall comply with the procedures in section 26.~~

~~(3) Requires restoration. The term “restoration,” as used in Water Code section 8709.6(d), means work in excess of that required to eliminate an unreasonable impact on public safety as defined in section 23, above, including, for example, work to re-establish an area to the condition it was in prior to the installation of an encroachment or other work. The term “restoration” shall also include environmental restoration work to re-create habitat lost by the construction of the encroachment. If restoration is required, only the board may issue a Cease and Desist Order after a public hearing pursuant to section 25.~~

~~(e) The Cease and Desist Order shall be effective immediately upon its issuance and copies shall be served by certified mail as set forth in Water Code section 8709.5(d). “Immediately,” as used in Water Code section 8709.5(d), shall mean the Cease and Desist Order shall be served as soon as reasonably possible, but no later than two (2) working days after issuance.~~

~~(f) The Cease and Desist Order shall state that the respondent has a right to an appeal hearing in accordance with section 25. The respondent may appeal by submitting a written protest within thirty (30) calendar days in accordance with section 110. The order remains in full force and effect during the pendency of any appeal.~~

~~(g) The respondent may request an inspection to determine if the actions taken by the respondent are in compliance with a Cease and Desist Order issued by the Executive Officer. If the Executive Officer determines that no further action is necessary or appropriate, the respondent shall be notified that the enforcement action is closed.~~

~~Note: Authority cited: Section 8571, Water Code. Reference: Sections 8534, 8596, 8598, 8608, 8704, 8708, 8709, 8709.4, 8709.5, 8709.6, 8710, and 8719, Water Code.~~

### ~~§ 25. Cease and Desist Order Board Hearing Procedures.~~

~~(a) If the Executive Officer believes that the results of an enforcement investigation so warrant, the Executive Officer may schedule a Cease and Desist Order hearing before the board pursuant to Water Code sections 8709.5 and 8709.6 for any of the reasons stated in section 23(b). The Executive Officer shall issue a Notice of Violation pursuant to section 23 prior to scheduling a Cease and Desist Order hearing before the board.~~

~~(b) Cease and Desist Order hearings shall be conducted pursuant to the evidentiary hearing procedures described in subsections (c)–(g) and (j) of section 13 and section 13.1 of these regulations with the following changes:~~

- ~~(1) The “applicant” shall be referred to as the “respondent”.~~
- ~~(2) The “application” shall be referred to as the “enforcement action”.~~
- ~~(3) Notice of the hearing shall be served on the respondent by certified mail or hand delivery at least thirty (30) calendar days prior to the hearing. The notice shall contain all the information required by section 13(g), as well as describe the violation and identify any statute(s) or regulation(s) the respondent is alleged to have violated.~~
- ~~(4) The Executive Officer shall provide the respondent with a copy of the staff report, along with any proposed resolution or proposed order, as applicable, at least twenty (20) calendar days prior to the hearing. The respondent may submit a written statement of defense to the Executive Officer at least fifteen (15) calendar days prior to the hearing.~~
- ~~(5) If the board President appoints a hearing officer, the hearing officer shall be a board member. A hearing may also be held by a partial committee of the board appointed by the board President. If the hearing is held by a partial committee of the board, the committee shall also follow the hearing officer procedures in section 13(f).~~
- ~~(6) If the hearing is held before a hearing officer or partial committee of the board, the hearing officer or committee shall prepare the proposed order and proposed decision required by section 13(f) within thirty (30) calendar days of the conclusion of the hearing. The respondent shall be provided with a copy of the proposed order and proposed decision at least ten (10) calendar days prior to the board’s consideration of the proposed decision.~~
- ~~(7) The written conclusions required by section 13.1(h) need not include a discussion of the elements identified in Water Code section 8610.5(e)(1)-(4).~~
- ~~(8) Cross examination shall not be allowed unless deemed appropriate by the President or appointed hearing officer.~~
- ~~(9) At the conclusion of the hearing, to comply with the requirement in section 13.1(h) that the board adopt written findings, the board may do any the following:
  - ~~(A) Immediately adopt all or part of the staff report, enforcement notice, or order;~~
  - ~~(B) Make such changes to the staff report, enforcement notice, or order as it deems appropriate for immediate adoption; or~~
  - ~~(C) The board President may direct a board member, along with board legal counsel and independent support staff, to draft a proposed decision and order for adoption by the board at a subsequent meeting pursuant to section 13.1(i). The respondent~~~~

~~shall be provided with a copy of the proposed decision and order at least ten (10) calendar days prior to the board's consideration of the proposed decision. The Board's consideration of a proposed decision at a subsequent meeting does not reopen the hearing and no new evidence will be permitted unless allowed by the board President. However, all parties shall be given an opportunity to present argument related to the proposed decision.~~

~~(10) The board decision shall include an order specifying the action that must be taken by the respondent, if any, which may include, but is not limited to:~~

~~(A) Removal of the work;~~

~~(B) Alteration of the work;~~

~~(C) A restoration order;~~

~~(D) Implementation of environmental mitigation;~~

~~(E) Filing an application for a permit pursuant to this division;~~

~~(F) Other terms and conditions the board may determine to be necessary, including but not limited to, inspection by the board or its authorized representatives;~~

~~(G) An order that if the respondent does not comply with the decision within a specified amount of time, the board, local maintaining agency, authorized representatives of the board, or a contractor hired by the board may take abatement actions, such as physical removal, and the board may recover any costs incurred from the respondent;~~

~~(H) An order requiring the respondent to file data as requested by the board or its authorized representatives.~~

~~Note: Authority cited: Section 8571, Water Code; and Section 11400.20, Government Code. Reference: Sections 6253, 11125, and 11425.10, Government Code; and Sections 8534, 8560, 8596, 8598, 8608, 8704, 8708, 8709, 8709.4, 8709.5, 8709.6, 8710, and 8719, Water Code.~~

## **§ 268. Permit Revocation.**

(a) A previously issued permit or approval may be revoked or modified for any of the following reasons:

(1) The permit or approval was obtained by misrepresentation or fraud;

(2) The permit or approval was approved or issued in error;

(3) One or more of the conditions of the permit or approval have not been satisfied or have been violated;

(4) One or more of the conditions of the permit or approval anticipate revocation if certain terms are met, and those terms have been met;

(5) The activity permitted by the permit or approval violates an applicable statute, law, or regulation, including but not limited to federal law or regulations;

(6) The activity permitted by the permit or approval is detrimental to the public health, safety, or welfare or interferes with the successful execution, functioning or operation of any flood control system feature; ~~or~~

(7) The activity permitted by the permit or approval constitutes a public nuisance as defined by statute or law; or:-

(8) The permit is for an encroachment that the board has ordered to be removed or modified because it makes one of the findings in Water Code 8702.

~~(b) The permittee shall be given fifteen (15) days prior notice by certified mail or hand delivery of a revocation hearing before the board, unless waived in writing.~~

~~(e)~~ (b) The board shall follow the hearing procedures in section 25(b), above, for permit revocation hearings, except that:-

(1) The “enforcement order” shall be referred to as the “revocation order.”

(2) The “application” shall be referred to as the “revocation action.”

~~(d)~~ (3) In addition to the notice requirements of section 25(b)(3), the notice shall describe any permit condition(s) that are the subject of the revocation hearing, and set forth any required findings, including those required for ordering the removal or modification of a previously permitted encroachment.

(4) The removal of previously permitted encroachments shall not be subject to administrative or civil penalties.

~~(e)~~ (c) The board may hold a single hearing to consider permit revocation ~~and a Cease and Desist Order,~~ removal or modification of a permitted encroachment, and approval of an enforcement order.

Note: Authority cited: Section 8571, Water Code; and Section 11400.20, Government Code.  
Reference: Sections 6253, 11125, and 11425.10, Government Code; and Sections 8534, 8560, ~~8596, 8598, 8608, 8700, 8702, 8704.4, and 8704, 8708, 8709, 8709.4, 8709.5, 8709.6, 8710, and 8719,~~ Water Code.

### ~~§ 27. Nuisance and Civil Penalty Provisions.~~

~~The Water Code authorizes the board to commence and maintain a civil suit in the name of the people of the State at any time for the prevention or abatement of public nuisances, as well as to~~

seek civil penalties for violations. A summary of the amount of potential civil penalties is set forth in Water Code section 8709.7. Examples of the penalties for some violations are as follows:

<b>Violation</b>	<b>Minimum Fine</b>	<b>Maximum Fine</b>
Permit conditions	\$500	\$30,000
Construction without permit	\$1000 per day	\$15,000 per day
Intentionally or negligently violating Cease and Desist Order	No minimum	\$6000 per day

Note: Authority cited: Section 8571, Water Code. Reference: Sections 8534, 8596, 8598, 8608, 8704, 8708, 8709, 8709.4, 8709.5, 8709.6, 8709.7, 8710, and 8719, Water Code.

## § 29. Lien Procedures

- (a) Before recording a lien, the board or its designee shall provide notice of the lien to the property owner that includes the following information:
- (1) identification of the board as the entity on whose behalf the lien is imposed,
  - (2) the board’s authority as described in Water Code Section 8704.2 (a) for recordation of the lien;
  - (3) a legal description and assessor’s parcel number for the real property upon which the lien is to be placed,
  - (4) the amount of the lien,
  - (5) the name of the property owner of record, and
  - (6) the time and date of a hearing before the board at which time the owner may appear to contest the amount of the lien.
- (b) Upon recordation, the lien shall continue until it is released or otherwise discharged by the board by recording a notice of discharge with the county clerk upon payment of the lien. The notice of discharge shall contain the information listed in (a)(1) through (5) of this section.
- (c) Any hearing held regarding recordation of the lien shall comply with the evidentiary hearing provisions described in these regulations at subsections (c) – (f) and (i) of section 13, section 13.1, and 13.2 with the following changes:
- 1) The “applicant” shall be referred to as the respondent
  - 2) The “application” shall be referred to as the “proposed lien”
  - 3) Notice of the hearing shall be provided 20 days before the hearing is scheduled to occur.

4) The staff recommendation, if adopted in whole or in part by the board, may serve as the written conclusions required by 13.1(h) and need not include a discussion of the elements identified in Water code Section 8610.5(c)(1)-(4).

Note: Authority cited: Section 8571, Water Code. Reference: 8534, 8598, 8701.4, 8704.2



**STATE OF CALIFORNIA  
CENTRAL VALLEY FLOOD PROTECTION BOARD  
3310 EL CAMINO AVENUE, RM. 151 (JOC)  
SACRAMENTO, CA 95821**

**Proposed Text of Regulations  
In Title 23, California Code of Regulations, Division 1  
Modify Article 4.1, Section 28 to read as follows:**

**CALIFORNIA CODE OF REGULATIONS  
BARCLAY'S OFFICIAL CALIFORNIA CODE OF REGULATIONS**

**Title 23. Waters  
Division 1. Central Valley Flood Protection Board  
Chapter 1. Organization, Powers and Standards  
Article 4.1 Reconsideration**

**§ ~~28~~30. Reconsideration.**

(a) No later than thirty (30) calendar days after adoption by the board of a decision or order, other than an enforcement order, any interested person affected by the decision or order may petition the board for reconsideration of the matter based on any of the following reasons:

- (1) Irregularity in the proceeding, or any ruling, or abuse of discretion which prevented a fair hearing;
- (2) The decision or order is not supported by substantial evidence;
- (3) There is relevant evidence, which could not have reasonably been produced previously; or
- (4) Error in law.

(b) The petition for reconsideration shall be in writing and contain the following:

- (1) Name and address of petitioner;
- (2) The specific action of which petitioner requests reconsideration;
- (3) The specific reason the action was inappropriate or improper;
- (4) The specific action which the petitioner requests;
- (5) A statement that copies of the petition and accompanying material have been sent to all interested parties.

(c) The board, in its sole discretion, may:

- (1) Refuse to reconsider the decision or order
- (2) Deny the petition upon finding that the decision or order was proper;
- (3) Set aside or modify the decision or order; or
- (4) Take other appropriate action.

(d) Any order or decision subject to reconsideration remains in full force and effect during the pendency of the petition for reconsideration.

(e) Any person seeking judicial review of a permit issued by the board must first seek reconsideration. If the permit is upheld or modified upon reconsideration, it may then be subject to judicial review.

(e) Enforcement orders are not subject to reconsideration by the board, but are subject to judicial review pursuant to Water Code Section 8579.

Note: Authority cited: Section 8571, Water Code. Reference: Sections 8598, 8608 and 8710 .