

# Memorandum

Date: May 8, 2013

To: Central Valley Flood Protection Board  
3310 El Camino Avenue, Room 151  
Sacramento, California 95821

  
Jay Punia, Executive Officer  
From: Central Valley Flood Protection Board

Subject: Subject: May 10, 2013 Board Meeting, Agenda Item 6A – Senate Bill 753

The following documents are attached to this memo to provide you with a quick status update of the proposed Senate Bill 753:

1. Response to Legislative Council questions via Dennis O'Connor regarding the proposed SB 753
2. Board Counsel Nicole Rinke's responses to questions raised by Board President Bill Edgar after review of Dennis O'Connor's draft amendments to the proposed SB 753
3. Board's response to Dennis O'Connor's draft amendments to the proposed SB 753
4. Dennis O'Connor's version of the proposed SB 753
5. Track change version showing the difference between the Board approved version and what is in print at the Legislature
6. Clean copy of the Board approved version of SB 753

Presently, the bill has been put in the "suspense file" of the Senate's Appropriation Committee, but it will be brought back again to the Appropriation Committee and then voted on by the committee members.

**Punia, Jay@DWR**

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**From:** Punia, Jay@DWR  
**Sent:** Wednesday, May 08, 2013 3:00 PM  
**To:** 'O'Connor, Dennis'  
**Cc:** Kip.Lipper@SEN.CA.GOV; Liu, Marie; Nicole.Rinke@doj.ca.gov; bedgar@edgarandassociates.com; clyde macdonald; 'Deborah Smith'  
**Subject:** Response to Legislative Council's questions RE: Draft Amends

Hi Dennis,

Here are our responses (shown in italic red font) to legislative council's questions. Give me a call or toss me an e-mail if you have any other questions. Please acknowledge that you have received my e-mail.

Thank you for your help.

Jay Punia

§8701 (d) – by striking “business” as in business days, do we now mean calendar days and if so shouldn't we say so?

*Yes, the language should say “calendar” days to make it clear*

§8701.4 (c) “At the conclusion of the hearing, the board may approve, amend, or reject the proposed enforcement order and thereby:” do one of the following, any of the following, any and all of the following?

*The language should read “any and all of the following”*

§8704.2 (c)(1) “Notice shall be provided twenty (20) days prior to the hearing pursuant to 8702.5.” exactly 20 days? At least 20 days? No more than 20 days?

*The language should read “at least 20 days”*

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**Jay S. Punia, P.E.**  
Executive Officer  
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<http://www.cvfpb.ca.gov/>

## Bill Edgar

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**From:** Nicole Rinke <Nicole.Rinke@doj.ca.gov>  
**Sent:** Friday, May 03, 2013 4:43 PM  
**To:** Punia, Jay@DWR (jay.punia@water.ca.gov); Bill Edgar; clyde macdonald (clydewallace2@yahoo.com)  
**Cc:** Deborah Smith  
**Subject:** Questions re. Dennis's changes

Bill raised questions about text removed from page 9 lines 15-26.

Subsection (g), we removed.

Subsection (h) has been relocated to page 10, lines 9-15.

Subsection (i) we removed.

No need to worry about the removal of these sections. It is correct in Dennis's version.

I will not be checking email, but I will be available by phone over the weekend and possibly into the early part of next week if you get really stuck! 775.254.9829 is my cell (only if you really need it).

Thanks, Nicole

Nicole Rinke / Deputy Attorney General / (916) 323-3549 / [Nicole.Rinke@doj.ca.gov](mailto:Nicole.Rinke@doj.ca.gov)  
Office of the Attorney General / Public Rights Division/ Land Law  
1300 I Street/ P.O. Box 944255/ Sacramento, CA 94224-2550

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## Bill Edgar

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**From:** Punia, Jay@DWR <Jay.Punia@water.ca.gov>  
**Sent:** Friday, May 03, 2013 5:20 PM  
**To:** O'Connor, Dennis  
**Cc:** Bill Edgar; Clyde Macdonald (clydewallace2@yahoo.com)  
**Subject:** RE: Draft Amends

Hi Dennis,

As we were not able to talk on the phone, I am just closing the loop that the majority of the changes you proposed are fine with the Board with very minor tweaks as noted below. If you have further questions or comments, please give me or Bill Edgar (712 - 0710) a call at your convenience. Bill and I are also planning to attend the Appropriation hearing on Monday.

Jay Punia

Page 4, starting on line 6. Your draft has commas in a different order than the bill in print. Personally, I like the in-print comma selection better, and so did not change them. If the placement of the commas is important, I can make the changes per your draft. *okay*

Page 4, starting on line 23. The way this reads, the department *must* accept the delegated authority. What if it doesn't want it? *change to: "This subdivision shall not require the local agency or department to accept the delegation"*

Page 4, starting on line 36. FYI, under WC §13, singular includes the plural, so I didn't change from "a corrective action" to "corrective actions," and similarly throughout the bill. *Okay*

Page 5, starting on line 6. I think the in-print version has it right, if a local agency issues the notice, you want the name, address, etc. of the local agency. I'm not sure what the "local office" refers to – the term isn't used elsewhere in this article. *Change to "Issuing Agency"*

Page 8, starting on line 8. I think the in-print version is more clear. I'm not sure what "by other means" would include beyond (a) or (b). If there is something specific in mind, I'd add another subdivision explicitly calling it out. Otherwise, I'd leave it as it is. *okay*

Page 9, after line 27. This is where you were going to put your new §8703.2. This is pretty much the same language as the in-print version of §8705 on page 10, line. The difference is that the in-print version explicitly creates the fund (which is necessary). Is there any reason why we can't just leave the in-print version as it is? (which I did) *These changes are fine*

Page 9, line 36. Why don't you want to be able to record a lien for civil or administrative penalties? *Liens are more commonly used for costs incurred. Although some jurisdictions do use them for administrative penalties, as a legal matter we chose to use the more conservative approach of authorizing the board to apply for a judicial judgment, which can then be recorded as a lien against the property.*

*DELETED BY JESSICA DW*

AS PROPOSED BY THE ASSEMBLY

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AMENDED IN SENATE APRIL 29, 2013

AMENDED IN SENATE APRIL 18, 2013

AMENDED IN SENATE APRIL 1, 2013

**SENATE BILL**

**No. 753**

**Introduced by Senator Steinberg**  
(Coauthors: Assembly Members Dickinson and Pan)

February 22, 2013

An act to amend Section 8752 of, to add Section 8579 to, and to repeal and add Article 6 (commencing with Section 8700) of Chapter 3 of Part 4 of Division 5 of, the Water Code, relating to flood protection.

legislative counsel's digest

SB 753, as amended, Steinberg. Central Valley Flood Protection Board.

(1) Existing law provides for the Central Valley Flood Protection Board with the authority to construct and maintain various flood control works. Existing law authorizes the board to hold a hearing or partial hearing before a committee of one or more members of the board, or before the general manager or chief engineer of the board, at any place within the state.

This bill would eliminate the authorization for the board to hold a hearing before the general manager and would authorize the board to hold a hearing or partial hearing before a qualified neutral hearing officer designated by the board president or the executive officer.

(2) Existing law requires specified plans that contemplate the construction, enlargement, revetment, or alteration of any levee, embankment, canal, or other excavation in the bed of or along or near the banks of the Sacramento or San Joaquin Rivers or any of their

tributaries or specified lands to be approved by the board before construction is commenced.

Existing law authorizes the board, and the executive officer if delegated that authority, to issue an order directing a person or public agency to cease and desist from undertaking, or threatening to undertake, an activity that may encroach on levees, channels, or other flood control works under the jurisdiction of the board. Existing law requires the cease and desist order to be issued only if the person or public agency has failed to respond in a satisfactory manner to a prescribed notice provided, as specified. Existing law provides that a cease and desist order is effective upon its issuance and that copies are required to be served immediately by certified mail upon the person or agency subject to the order.

This bill would repeal these provisions and provide that it is unlawful for any person or public agency to interfere with or obstruct the performance of the maintenance or operation of works or other plans adopted by the board within the jurisdiction of the board, as specified. This bill would authorize the board to order the removal or modification of an encroachment that was previously issued a permit by the board if the board makes a specified finding.

This bill would authorize the board, the executive officer, the department, or certain local agencies to issue a notice of violation, as specified, if it is determined that any person or public agency has undertaken, is threatening to undertake, or maintains any encroachment, improvement, or activity in violation of certain provisions. If the board or executive officer determines that any person or public agency has failed to adequately respond to a notice of violation, this bill would authorize the board or executive officer to issue an order directing that person or public agency to cease and desist, as specified. This bill would provide that if the board determines that any person or public agency has failed to correct a violation as required in a cease and desist order, the board may issue an enforcement order, as prescribed.

This bill would provide the board, executive officer, Department of Water Resources, and local agencies that operate and maintain facilities and works on behalf of the board with the authority, as prescribed, to take administrative or civil enforcement actions to abate and remedy any interference or potential interference with these works. This bill would establish the Flood Risk Management Fund in the State Treasury and require all funds received from these penalties to be paid into the fund and available, upon appropriation by the Legislature, to be



expended by the board to carry out enforcement of these provisions.  
The bill would require the board to adopt emergency regulations necessary to implement these provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 8579 is added to the Water Code, to read:

2 8579. (a) Any aggrieved person shall have a right to ~~seek~~ judicial  
3 review of any ~~decision or action of permit or enforcement order issued by~~ the board, ~~or the executive~~  
4 ~~officer acting pursuant to delegated authority~~, by filing a petition  
5 for a writ of mandate in accordance with Section 1094.5 of the  
6 Code of Civil Procedure, within ~~60~~ 30 days after the decision or action  
7 has become final.

8 (b) For purposes of this section, an "aggrieved person" means  
9 ~~any of the following:~~

10 ~~(1) A any person or public agency that, in person or through a~~  
11 ~~representative, appeared at a public hearing of the board in~~  
12 ~~connection with the decision or action appealed, or who, by other appropriate means prior to the decision,~~  
13 ~~informed the board of the nature of their concerns.~~

14 ~~(2) A person or public agency that, by other appropriate means~~  
15 ~~prior to the decision, informed the board of the nature of the person~~  
16 ~~or public agency's concerns.~~

17 ~~(3) A person or public agency that for good cause was unable~~  
18 ~~to appear, as described in paragraph (1), or inform the board, as~~  
19 ~~described in paragraph (2).~~

20 SEC. 2. Article 6 (commencing with Section 8700) of Chapter  
21 3 of Part 4 of Division 5 of the Water Code is repealed.

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

24 Article 6. Enforcement of Unauthorized Activities and  
25 Encroachments

26  
27 8700. ~~(a)~~ (a) It is unlawful for any person or public agency to interfere  
28 with ~~or~~ obstruct the performance ~~of the~~ maintenance, or operation  
29 ~~of, or otherwise take actions that may adversely affect facilities of the State Plan of Flood Control,~~  
30 ~~designated floodways, or streams that are regulated by the board,~~  
31 ~~of works or other plans adopted by the board within the jurisdiction~~  
32 ~~of the board, including facilities of the State Plan of Flood Control,~~  
33 ~~if the state or a political subdivision of the state has given~~  
34 ~~assurances to the Secretary of the Army pursuant to Article 2~~

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~~f— (commencing with Section 8615); that the state or a political  
2 subdivision of the state will maintain and operate works after  
3 completion in accordance with regulations prescribed by the  
4 Secretary of the Army, and any facilities or works constructed as  
5 part of an adopted plan of flood control or areas protected therein.~~

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

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~~The  
11 unlawful interference proscribed by this article includes, but is not  
12 limited to, the construction of any encroachment or improvement  
13 without, or in violation of, the permits required by this part or the  
14 maintenance of a previously permitted encroachment that is deemed  
15 to interfere with these works pursuant to Section 8702.~~

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16 8701. (a) If the board, ~~or~~ the executive officer, ~~or department~~  
17 determines that any person or public agency has undertaken, is  
18 threatening to undertake, or maintains any encroachment, flood system  
19 improvement, or activity in violation of this part, the board, ~~or~~  
20 executive officer, ~~or department~~ may issue a notice of violation to  
21 the person or public agency responsible for the encroachment, flood system improvement, or  
22 activity.

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23 (b) ~~A~~ The department or a local agency ~~that operates and maintains facilities within~~  
24 ~~the board's jurisdiction~~ may ~~also~~ issue a notice of violation  
25 pursuant to subdivision (a) for facilities with the board's jurisdiction that the department or  
local agency operates and maintains if the board delegates the local agency ~~it~~  
26 that authority. This subdivision shall not require the local agency  
27 to accept that delegation of authority.

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28 (c) A notice of violation shall include all of the following:  
29 (1) A statement describing the activity, failure to act, flood system  
30 improvement, or encroachment that constitutes a violation of this  
31 article, including the sections of this part or board regulations that are being violated.

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

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

36 (4) Whether the person or public agency may correct the  
37 violation without obtaining prior approval from the board or  
38 executive officer, or whether prior approval from the board or  
39 executive officer must be obtained prior to taking a corrective  
40 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 ~~expense of the~~ person or public ~~agency's expense and agency plus fines or~~ penalties.

(6) The name, address, and telephone number of the state or local 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 ~~business~~ 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 not to be in the best interest of the state.~~

(b) A cease and desist order shall ~~include~~:

- ~~(1) Include~~ a copy of the notice of violation, ~~and shall require~~
- ~~(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. ~~A cease and desist order shall be effective upon its issuance and shall be served immediately pursuant to Section 8703.~~

~~(c) (1) A cease and desist order shall allow the person or agency subject to the order to request a hearing before the board within 30 days of being served with the order.~~

~~(2) If a person or public agency subject to a cease and desist order fails to request a hearing within the time specified in paragraph (1), the right to a hearing shall be deemed waived and no hearing shall be required prior to issuance of an enforcement order pursuant to section 8701.4.~~

~~(d) (1) A person or public agency subject to a cease and desist order requests a hearing in accordance with paragraph (1) of subdivision (c), the board shall hold a public hearing on the cease~~

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~~40— and desist order as follows:~~

~~(4) Provide 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) The meeting noticed pursuant to paragraph (4) of subdivision (b) shall comply with the following:~~

~~(1) The meeting shall be scheduled at least thirty 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. 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 the following:~~

- 1 (1) Notice of the hearing shall be provided at least 30 days before the hearing is
- 2 scheduled pursuant to Section
- 3 8703 unless it is determined that the public interest necessitates a shorter notice period,
- 4 and shall include the date, time, and location of the hearing
- 5 and a statement that failure to appear at the hearing will constitute
- 6 a waiver of the right to a hearing and will result in the entry of a
- 7 default enforcement order.

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

- 6 ~~(2)(3)~~ The hearing shall be held pursuant to the provisions of this
- 7 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.~~

- 8 ~~(3)(c)~~ At the conclusion of the hearing, the board may affirm approve,
- 9 amend, or rescind-reject the proposed enforcement order and thereby: the cease and desist-
- 10 order. If the board affirms

~~or modifies the cease and desist order and the person or agency subject to the order fails to complete the corrective actions required in the cease and desist order, no further hearing shall be required prior to the issuance of a subsequent enforcement order by the board.~~

~~(e) If a person or public agency subject to a cease and desist order fails to comply with the order and does not request a hearing in accordance with paragraph (1) of subdivision (c), the cease and desist order shall be recorded with the appropriate county recorder's office by the board against the person or public agency's property associated with the order.~~

~~(f) When an enforcement action has been fully resolved, including the payment of any costs and penalties, the executive officer shall issue a certificate of abatement to the person or public agency against whose property the cease and desist order was recorded pursuant to subdivision (e). That person or public agency may, at the person or public agency's expense, record the certificate with the appropriate county recorder's office.~~

~~8701.4. (a) If the board determines that any person or public agency has failed to correct a violation as required in a cease and desist order issued pursuant to Section 8701.2, the board may issue an enforcement order.~~

~~(b) An enforcement order may do the following:~~

- 32 (1) Order the removal and restoration, modification, or abatement of the
- 33 encroachment, flood system

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34 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) Initiate a civil action in the name of the State for mandamus, injunction, civil penalties or other appropriate remedy authorized by law.

(5) 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 whom 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 and restoration pursuant to this part, the ~~The~~ board,

35 its contractor, or its designee may conduct the removal and

36 restoration, the costs of which shall be collected from the

37 responsible person or public agency by whatever legal remedy is

38 available, including, but not limited to, the placement of a lien on

39 the property owned by the person or public agency responsible for

40 the violation pursuant to Section 8704.2. No removal or restoration actions shall be taken

by the board until after the time for judicial review has passed.

(g) This section does not authorize the issuance of an Enforcement Order as to any lawful activity undertaken by a local public agency pursuant to Section 8708.

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~~1 (2) Assess and require the payment of administrative penalties  
2 as set forth in Section 8704.~~

~~3 (3) Order the initiation of a civil action by the board in the name  
4 of the state for mandamus, injunction, or other appropriate remedy  
5 authorized by law.~~

~~6 (4) Order any other actions or conditions as the board may  
7 determine are necessary to avoid a potential adverse impact to  
8 public safety or to ensure compliance with this part.~~

~~9 (c) The enforcement order shall be served immediately pursuant  
10 to Section 8703.~~

~~11 (d) A person or public agency against which the board has issued  
12 an enforcement order may seek judicial review of the enforcement  
13 order pursuant to Section 8579. The enforcement order shall be  
14 deemed effective upon issuance, but no removal actions may  
15 action shall not be taken by the board until after the time for  
16 judicial review has passed.~~

~~17 (e) This section shall not be construed to authorize the issuance  
18 of an enforcement order against a local public agency undertaking  
19 any lawful activity pursuant to a declaration of emergency by the  
20 governing body of the local public agency or the board of  
21 supervisors of the county in which the activity is being or may be  
22 undertaken.~~

23 8702. (a) The board, following notice and opportunity for a hearing, may order the  
removal or modification

24 of an encroachment that was previously issued a permit by the  
25 board if the board makes one of the following findings based on substantial evidence:

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

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

32 (3) The encroachment is not in conformance with an adopted  
33 plan of flood control, state law, board regulations, or, in the case  
34 of facilities of the State Plan of Flood Control, where the board has  
35 given assurances to the United States, the standards and regulations  
36 of the Secretary of the Army.

37 (b) Routine maintenance by the board, the executive officer, or local agencies that  
operate and maintain facilities and works on behalf of the board that includes the removal  
or

38 modification of abandoned property, fences, gates, and vegetation  
39 on the levee structure and a levee or other flood control structure shall not  
40 be subject to this section.

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

1 8703. Notice and service required by this article shall be  
2 provided to the person or public agency believed to be responsible  
3 for the violation and the owner of the property on which the  
4 violation occurred or is threatened to occur by one of the following  
5 means:

- 6 (a) Hand delivery.
- 7 (b) Certified mail.
- 8 (c) If the person or agency cannot be reached or reasonably  
9 notified pursuant to subdivision (a) or (b), by placing a copy of  
10 the notice or order on the encroachment or property.

11 8704. (a) Civil penalties may be imposed by a court of competent jurisdiction  
12 against any person or public agency that undertakes an  
13 activity, flood system improvement, or encroachment that is in violation of this  
14 part or that is inconsistent with any permit or cease and desist 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), may be assessed

~~15 a civil penalty in an amount not greater than fifteen thousand~~  
~~16 dollars (\$15,000) per day for each day in which the violation occurs~~  
~~17 or persists.~~

~~18 (b) Administrative penalties may be assessed by the board in~~  
~~19 the same manner as civil penalties described in subdivision (a)~~  
~~20 upon issuance of an enforcement order pursuant to Section 8701.4,~~  
~~21 but may not be less than five hundred dollars (\$500) or exceed~~  
~~22 fifty thousand dollars (\$50,000) for a single violation.~~

(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  
previously issued by the board or executive officer in an amount that shall not be less than  
one thousand dollars (\$1,000), nor more than fifteen thousand dollars (\$15,000), per day  
for each day in which the encroachment persists.

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

- 25 (1) The nature, circumstance, extent, and gravity of the violation.
- ~~26 (2) Whether the violation was committed intentionally or~~  
~~27 knowingly.~~
- 28 ~~f3)2) Whether the violation is susceptible to restoration or other~~  
29 remedial measures.
- 30 ~~f4)3) Whether the function of the levee, channel, or other flood~~  
31 control work is affected by the violation.
- 32 ~~f5)4) The cost to the state of bringing the action.~~
- 33 ~~f6)5) With respect to the person or public agency responsible for~~

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34 the violation, any voluntary restoration or remedial measures  
35 undertaken, any prior history of violations, the degree of  
36 culpability, economic profits, if any, resulting from, or expected  
37 to result as a consequence of, the violation, and other matters the  
38 board deems relevant.

~~39 (d) Any penalties assessed shall be required to be paid within~~  
~~40 30 calendar days.~~

(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 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 may 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 must make express its rationale for the amount and specifically address the factors in 8704(c).

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

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~~(d)~~ No person or public agency shall *not* be subject to both civil and administrative penalties for the same violation.

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~~(c)~~ 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.

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~~(g)~~ After the time for judicial review pursuant to Section 8579 has passed, the board may also recover assessed penalties through a lien against the property of the person or agency responsible for the violation pursuant to Section 8704.2.

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~~(h)~~ All funds generated by the imposition of penalties pursuant to this section shall be deposited into the Flood Risk Management Fund as set forth in Section 8703.

~~(i)~~ In addition to the penalties described in this section, any individual who erects or maintains a violation that is found to be the proximate cause of a failure of a levee or other flood control facility shall be liable for additional damages or law, including any liability that may be incurred by the state.

8704.2. (a) Pursuant to Section 8701.4(f), the board or the board's designee, the board, after providing the opportunity for a

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hearing, shall have the authority to record a lien with the county clerk in the county of this state where the person or agency's property responsible for the violation is located, to recover any and all of the following:

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

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

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~~(3)~~ Civil or administrative penalties assessed pursuant to this article.

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

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

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

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(1) Notice shall be provided twenty (20) days prior to the hearing pursuant to 8703.

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

1 8704.4. The remedies provided by this article are not exclusive  
2 of, but shall be concurrent with and in addition to, any other  
3 remedy, penalty, or sanction that may exist by law, civil or  
4 criminal. The board may enforce compliance with the provisions  
5 of this article by mandamus, mandatory injunction, or by any other  
6 appropriate remedy authorized by law. The action or proceeding  
7 may be commenced and maintained by the board in the name of  
8 the state.

9 8705. The Flood Risk Management Fund is hereby established  
10 in the State Treasury. All funds received from penalties pursuant  
11 to this article shall be paid into the fund. Upon appropriation by  
12 the Legislature, the moneys in the fund shall be expended by the  
13 board to carry out enforcement pursuant to this part, including the  
14 costs of the abatement and restoration of violations and recent  
15 litigation.

16 8706. The board may maintain actions in the name of the state  
17 to compel by injunction the owner or owners of any bridge, trestle,  
18 wire line, viaduct, embankment, or other structure or obstruction  
19 that shall be intersected, traversed, or crossed by any bypass,  
20 drainage canal, channel, or overflow channel to construct or alter  
21 any structure in order to offer a minimum of obstruction to the free  
22 flow of water. In the case of existing works, the board may compel  
23 the removal or alteration of structures or obstructions that impede  
24 the free flow of water.

25 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.  
Any use of land, right-of-way, or easement within the

jurisdiction of the board, whether for cultivation, planting of crops,

trees or other vegetation, storage or disposal of material, or other

encroachment upon, improvement of, or use of that land, right of

way, or easement that does or may interfere with or obstruct

operation or maintenance in violation of this part constitutes a

31 public nuisance, and the board may commence and maintain a suit

32 in the name of the people of the state for the prevention or

33 abatement of that nuisance.

34 8707. If the board or Attorney General prevails in a civil action  
35 to enforce this part, or if a local agency prevails in a civil action to seek abatement costs

under Section 8708(b) or removal or restoration costs as the board's designee under  
Section 8701.4(f), the board, ~~or~~ Attorney General, ~~or local agency~~ shall be awarded

36 attorney's fees and costs, including, but not limited to, any fees

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37 and costs incurred by its agents.  
38 8708. (a) Nothing in this article shall be construed to prevent  
39 the department, the board, the executive officer, or a  
40 levee-maintaining agency from taking any action to prevent an

1 imminent failure of a levee, ~~in a~~ permeable channel, floodway, stream bank, or a flood control  
2 feature, or

3 ~~to take~~ other emergency action necessary to protect the public  
4 welfare.

5 (b) To the extent emergency action is required that involves the removal, modification,  
6 or abatement of an encroachment, flood system improvement, or activity maintained by an  
7 individual, entity, or public agency, the individual, entity, or public agency to abate an  
8 action.

9 ~~any aggrieved person~~ may request a hearing before the board within  
10 30 days after the action has been commenced.

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

16 *8709. The board shall adopt emergency regulations necessary*  
17 *to implement this article in accordance with Chapter 3.5*  
18 *(commencing with Section 11340) of Part 1 of Division 3 of Title*  
19 *2 of the Government Code. The adoption of emergency regulations*  
20 *shall be deemed an emergency and necessary for the immediate*  
21 *preservation of the public peace, health and safety, or general*  
22 *welfare.*

23 SEC. 4. Section 8732 of the Water Code is amended to read:

24 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.

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APPROVED BY THE BOARD

April 5, 2013 (WITH PERMIT SECTIONS REMOVED)

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 ~~decision~~permit or action of Enforcement Order issued by the board, or the executive officer acting pursuant to delegated authority, by filing a petition for a writ of mandate in accordance with Section 1094.5 of the Code of Civil Procedure, within ~~60~~thirty (30) days after the ~~decision or~~ action has become final.

(b) For purposes of this section, an “aggrieved person” means any ~~of the following:~~

~~(1) A person, entity, or public agency that who, in person or through a representative, appeared at a public hearing of the board in connection with the decision or action appealed, or who, by other appropriate means prior to the decision, informed the board of the nature of their concerns.~~

~~(2) A person or public agency that, by other appropriate means prior to the decision, informed the board of the nature of the person or public agency's concerns.~~

~~(3) A person or public agency that for good cause was unable to appear, as described in paragraph (1), or inform the board, as described in paragraph (2).~~

SECTION 2. Article 6 (commencing with Section 8700) of Chapter 3 of Part 4 of Division 5 of the Water Code is repealed.

SECTION 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

~~8700.8702. Interference with maintenance and operation of works – Enforcement Authority~~

~~(a) It is unlawful for any person, entity, or public agency to interfere with or, obstruct the performance of the, maintenance, or operation of works or other plans adopted by the board within the jurisdiction of the board, including facilities, or otherwise take actions that may adversely affect Facilities of the State Plan of Flood Control, if the state or a political subdivision of the state has given assurances to the Secretary of the Army pursuant to Article 2 (commencing with Section 8615), that the state or a political subdivision of the state will maintain and operate works after completion in accordance with regulations prescribed by the Secretary of the Army, and any facilities or works constructed as part of an adopted plan of flood control or areas protected thereto. 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 with these works. The unlawful interference proscribed by this article includes, but is not limited to, the construction of any encroachment or improvement without, or in violation of, the permits required by this part or the maintenance of a previously permitted encroachment~~



~~that is deemed to interfere with these works pursuant to Section 8702, proscribed in subsection (a).~~

~~8701-8702.1~~ (a) If the board, ~~or the executive officer, or department~~ determines that any person, ~~entity,~~ 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, or department~~ may issue a ~~notice~~ Notice of Violation to the person, ~~entity,~~ or public agency responsible for the encroachment, flood system improvement, or activity.

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

~~(c) The Notice of authority.~~

~~(e) A notice of violation~~ 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 must be taken within a specified time period.
  - (4) Whether the person, entity, 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~~ actions.
  - (5) A statement that the ~~notice~~ Notice of Violation will be referred to the board and that the failure to take the requested actions within the time specified may subject the person, entity, or public agency to a ~~cease~~ 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 ~~expense of the person, entity, or public agency plus fines or agency's expense and penalties;~~ and
  - (6) The name, address, and telephone number of the ~~state~~ State or local ~~agency~~ office that may be contacted for further information.
- (d) The ~~notice of violation~~ shall be served in accordance with Section ~~8703~~ 8702.5 and a copy transmitted to the board executive officer within five ~~business~~ (5) days of its issuance. The board or the executive officer may amend the ~~notice~~ Notice of Violation and such amended Notice of Violation, once served in accordance with Section ~~8703, the amended notice of violation~~ 8702.5, shall supersede any ~~notice~~ Notice of Violation previously issued for the same violation.

#### ~~8701~~ 8702.2 – Cease and Desist Order

(a) If the board or executive officer determines that any person, entity, or public agency has failed to adequately respond to a ~~notice~~ Notice of Violation, the board or executive officer may issue an order directing that the person, entity, or public agency to whom or to which the ~~notice~~ Notice of Violation was issued to cease and desist. Nothing shall prevent the board or executive office from issuing a Cease and Desist Order in cases where it



deems a Notice of Violation not to be in the best interest of the state.

~~(b) A cease and desist order~~ Desist Order shall include:

~~(1) Include a copy of the notice~~ Notice of violation

~~(2) Be effective upon its issuance and shall require~~ reserved immediately pursuant to Section 8702.5.

~~(3) Require that the corrective actions described in the notice~~ Notice of violation be completed within a specified time period or the person, entity, or public agency will be subject to an Enforcement Order as described in Section 8702.3.

~~(4) Provide date, time, and location of a public meeting before the board at which the person, entity, or public agency shall be subject to an enforcement order pursuant to Section 8701.4. A cease and desist order may appear to contest the Cease and Desist Order.~~

~~(c) The meeting noticed pursuant to subsection (b)(4) shall comply with the following:~~

~~(1) The meeting shall be effective upon its scheduled at least thirty (30) days after issuance of the Cease and Desist Order and shall be served immediately held pursuant to Section 8703 the provisions of this part and regulations adopted by the board.~~

~~(e) (1) A cease and desist order shall allow~~ (2) At the meeting the board may affirm, amend, modify, stay or rescind the Cease and Desist Order.

~~(3) If the person, entity, or public agency subject to the order Cease and Desist Order fails to request a hearing before the board within 30 days of being served with the order appear at the meeting, the Cease and Desist Order may be approved by default.~~

~~(2) If~~

#### 8702.3 Enforcement Hearing and Order

~~(a) person~~ If the board or executive officer determines that any person, entity, or public agency subject to a cease and desist order fails to request a hearing within the time specified in paragraph (1), the right to a hearing shall be deemed waived and no hearing shall be required prior to issuance of an enforcement order pursuant to Section 8701.4.

~~(d) If a person or public agency subject to a cease and desist order requests a hearing has failed to correct a violation as outlined in accordance with paragraph (1) of subdivision (e), a Cease and Desist Order the board shall hold a publican enforcement hearing onto consider the cease and desist order as follows:~~ issuance of an Enforcement Order.

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

~~(1) Notice of the hearing shall be provided pursuant to Section 8703 and shall include the date, time, and location of at least thirty (30) days before the hearing is scheduled pursuant to Section 8702.5, unless it is determined that the public interest necessitates a shorter notice period.~~

~~(2) Notice of the hearing and a statement that failure to appear at the hearing will constitute a waiver of the right to a hearing and will result in the entry of a default enforcement orders shall include a proposed Enforcement Order, including any proposed administrative penalties.~~

~~(23) The hearing shall be held pursuant to the provisions of this part and regulations adopted by the board.~~

~~(34) If the person, entity, 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 affirm approve, amend, or rescind the cease and desist order. If the board affirms or modifies the cease and desist order and the person or agency subject to reject the order fails to complete the corrective actions required in the cease and desist order, no further hearing shall be required prior to the issuance of a subsequent proposed~~



enforcement order ~~by the board and thereby:~~

~~(e) If a person or public agency subject to a cease and desist order fails to comply with the order and does not request a hearing in accordance with paragraph (1) of subdivision (c), the cease and desist order shall be recorded with the appropriate county recorder's office by the board against the person or public agency's property associated with the order.~~

~~(f) When an enforcement action has been fully resolved, including the payment of any costs and penalties, the executive officer shall issue a certificate of abatement to the person or public agency against whose property the cease and desist order was recorded pursuant to subdivision (g). That person or public agency may, at the person or public agency's expense, record the certificate with the appropriate county recorder's office.~~

~~8701.4. (a) If the board determines that any person or public agency has failed to correct a violation as required in a cease and desist order issued pursuant to Section 8701.2, the board may issue an enforcement order.~~

~~(b) An enforcement order may do the following:~~

~~(1) Order the removal and restoration, 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 8703.~~

~~(4) Order the initiation of initiate a civil action by the board in the name of the State for mandamus, injunction, civil penalties or other appropriate remedy authorized by law.~~

~~(5) 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 8702.5.~~

~~(e) A person, entity, or public agency against whom 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, but no removal actions shall be taken by the board until after the time for judicial review has passed.~~

~~(f) If the board orders removal and restoration pursuant to this part, the board, its contractor, or its designee may conduct the removal and restoration, the costs of which shall will be collected from the responsible person, entity, or public agency by whatever legal remedy is remedies are available, including, but not limited to, the placement of a lien on the property owned by the person, entity, or public agency responsible for the violation pursuant to Section 8704.2. No removal or restoration actions shall be taken by the board until after the time for judicial review has passed.~~

~~(2) Assess and require the payment of administrative penalties as set forth in Section 8704.~~

~~(3) Order the initiation of a civil action by the board in the name of the state for mandamus, injunction, or other appropriate remedy authorized by law.~~

~~(4) Order any other actions or conditions as the board may determine are necessary to avoid a potential adverse impact to public safety or to ensure compliance with this part.~~

~~(e) The enforcement order shall be served immediately pursuant to Section 8703.~~

~~(d) A person 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, but no removal actions may be taken by the board until after the time for judicial review has passed.~~



~~(eg) This section shall does not be construed to authorize the issuance of an enforcement order against a local public agency undertaking Enforcement Order as to any lawful activity pursuant to a declaration of emergency by the governing body of the local public agency or the board of supervisors of the county in which the activity is being or may be undertaken by a local public agency pursuant to Section 8709.~~

8702.4. Removal or modification of previously permitted encroachments (current 8709.4)

(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, or 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 an adopted plan of flood control, state law, board regulations, or, in the case of facilities of the State Plan of Flood Control where the board has given assurances to the United States, the standards and regulations of the Secretary of the Army.

(b) Routine maintenance by the board, the executive officer, 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 the levee structure and or other flood control structures is not subject to this section.

~~(c) The removal of previously permitted encroachments shall not be subject to this section.~~

~~administrative or civil penalties pursuant to 8703 or 8703.1.~~

8702.5 Notice

Notice and service required by this article shall be provided to the person, entity, 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; or
- (c) If the person, entity, or agency cannot be reached or reasonably notified pursuant to subdivision (a) or (b), by placing by other means, by posting a copy of the notice or order on the encroachment or property.

8704-8703 Civil Penalties (current 8709.7)

(a) Civil penalties may be imposed by a court of competent jurisdiction against a person, entity, 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 previously issued by the board or executive officer may be assessed a civil penalty in an amount not less than five hundred dollars (\$500) and not greater than fifteen thousand dollars (\$15,000) per day for each day in which the violation occurs or persists.

(b) In addition to any other penalties, civil penalties may be imposed by a court of competent



~~jurisdiction against Administrative~~ Any person, entity, 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 previously issued by the board or executive officer, ~~may, in addition to any other penalties may, be assessed by the board in the same manner as civil penalties described in subdivision (a) upon issuance of an enforcement order pursuant to Section 8701.4, but may in an amount that shall not be less than five hundred one thousand dollars (\$500) or exceed fifty1,000), nor more than fifteen thousand dollars (\$5015,000)), per day for a single violation each day in which the encroachment persists.~~

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

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

(2) Whether the violation ~~was committed intentionally or knowingly~~ is susceptible to restoration or other remedial measures.

~~(3) Whether the violation is susceptible to restoration or other remedial measures.~~

~~(4)~~ (3) Whether the function of the levee, channel, or other flood control work is affected by the violation.

~~(5)~~ (4) The cost to the ~~state~~ State of bringing the action.

~~(6)~~ (5) With respect to the person, entity, 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 deems relevant.

~~(d) Any penalties assessed shall be required to be paid within 30 calendar days.~~

~~(e)~~ (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 order issued, reissued, or amended by the board may be liable for a civil penalty 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.

#### 8703.1 Administrative Penalties

(a) Administrative penalties may be imposed by the board in the same manner as civil penalties described in Section 8703, upon an enforcement hearing and issuance of an Enforcement Order pursuant to Section 8702.3, but may 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 must make express its rationale for the amount and specifically address the findings factors in 8703(c).

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

(d) No person, entity, or public agency shall be subject to both civil and administrative penalties for the same violation.

~~(e)~~ (f) 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.

~~(g) After the time for judicial review pursuant to Section 8579 has passed, the board may also recover assessed penalties through a lien against the property of the person or agency responsible for the violation pursuant to Section 8704.2.~~

~~(h) All funds generated by the imposition of penalties pursuant to this section shall be deposited into the Flood Risk Management Fund as set forth in Section 8703.2 Flood Risk Management Fund~~

~~The Flood Risk Management Fund shall be maintained in the State Treasury. All funds received from penalties pursuant to Sections 8703 and 8703.1 of this article shall be deposited in the Flood Risk Management Fund.~~

~~(i) In addition to the penalties described in this section, any individual who erects or maintains a violation that is found to be the proximate cause of a failure of a levee or other flood control facility shall be liable for additional damages at law, including any liability that may be incurred by the state.~~

~~shall be paid into the Fund. Upon appropriation by the legislature, the monies in the Fund shall be expended by the board to carry out enforcement pursuant to this part, including for the costs of the abatement and restoration of violations and related litigation.~~

#### 8704.2. Lien Authority

~~(a) Pursuant to Section 8702.3(f), the board or the board's designee shall provide the opportunity for a hearing, shall have the authority to record a lien with the county clerk County Clerk in the county of this state State where the person, entity, or agency's agency's property responsible for the violation is located, to recover any and all of the following:~~

~~(1) Costs incurred by the board, executive officer, department, local agency, or contractor in abating, removing, and restoring a violation, including, but not limited to, costs incurred in seeking removal, abatement, and restoration pursuant to this part;~~

~~(2) Costs incurred in the summary abatement of emergencies; and~~

~~(3) Civil or administrative penalties assessed pursuant to this article.~~

~~(4) Attorney's Attorney's fees associated with actions to enforce this part.~~

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

~~8704.4. (c) Prior to 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 twenty (20) days prior to the hearing pursuant to 8702.5.~~

~~(2) The hearing required by this Section may be satisfied by an Enforcement Order hearing pursuant to 8702.3 or, in the summary abatement of emergencies, a hearing pursuant to 8709.~~

#### 8705. Concurrent and additional remedies (current 8704 and 8705 combined)

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 which 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 State.



~~8705. The Flood Risk Management Fund is hereby established in~~

~~8706. 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 abatement and restoration of violations and recent litigation.~~

~~Actions to ensure the free flow of water (current 8706 and 8707 combined)~~

~~8706. The board may maintain actions in the name of the stateState to compel by injunction the owner or owners of any bridge, trestle, wire line, viaduct, or embankment, or other structure or obstruction thatwhich shall be intersected, traversed, or crossed by any bypassby-pass, 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. InThe board may 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. 8707. Public nuisance; abatement (current 8709)~~

~~Any use of land, right of way, or easement within the jurisdiction of the board, whether for cultivation, planting of crops, trees or other vegetation, storage or disposal of material, or other encroachment upon, improvement of, or use of that land, right of way, or easementactivity that does or may interfere with or obstruct operation orthe performance, maintenance in violation of this part, 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 stateState for the prevention or abatement of thatsuch nuisance.~~

~~8707. 8708 Attorneys Fees~~

~~If the board or Attorney Generalattorney 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 Section 8709(b) or removal or restoration costs as the board's designee under Section 8702.3(f), the board, or Attorney Generalattorney general, or local agency shall be awarded attorney'sattorney's fees and costs, including, but not limited to, any fees and costs incurred by its agents.~~

~~8708. 8709 Summary Abatement of Emergencies~~

~~(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, to operatechannel, floodway, stream bank, or flood control feature, or to take other emergency action necessary to protect the public welfare.~~

~~(b) To the extent emergency action is required to abate that involves the removal, modification, or abatement of an action, any aggrievedencroachment, 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 boardBoard within thirty (30) days after the emergency action has been commenced.~~

~~(c) After a public hearing, by request or by its own motion, the-any 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.

~~SECTION 4. Section 8710.2 is added to the Water Code, to read:~~

~~8710.2. Encroachment Permits—Approval before commencement of construction~~

~~(a) No person, entity, or governmental public agency may place an encroachment over, on, in, or under flood control facilities, works, or lands under the jurisdiction of the board, including, but not limited to, those lands required for a associated with Facilities of the State Plan of Flood Control, Designated Floodways, or streams that are regulated by the Board, without obtaining an encroachment permit from the board.~~

~~(b) At the board's discretion, any Any encroachment permit issued shall be subject, at the board's discretion, to conditions necessary to ensure compliance with this part, including, but not limited to, a condition that the permit be recorded to the affected parcels with the county recorder's office.~~

~~(c) Levee maintenance and minor repairs by a local public agency that operates and maintains facilities and works on behalf of the board do not require a permit under this section.~~

~~SECTION 5. Section 8710.3 is added to the Water Code, to read:~~

~~recorder's 8710.3 State and Local Flood System Improvements Permits—Approval before commencement of construction~~

~~(a) No state or local governmental agency may commence construction of any flood facility or flood system improvement, including conservation and recreation elements that encroaches on flood control facilities, works, or lands under the jurisdiction of the board, including those associated with Facilities of the State Plan of Flood Control, Designated Floodways, or streams that are regulated by the Board without obtaining a Flood System Improvement Permit from the board.~~

~~(b) Any Flood System Improvement Permit issued shall be subject, at the board's discretion, to conditions necessary to ensure compliance with this part, including a condition that the permit be recorded to the affected parcels with the county recorder's office.~~

~~(c) Levee maintenance and minor repairs by a local public agency that operates and maintains facilities and works on behalf of the board do not require a permit pursuant to under this section.~~

~~(d) Any person or public agency requesting approval of an encroachment permit shall, at the discretion of the board, do either of the following:~~

~~(1) Submit a reasonable filing fee prescribed by the board pursuant to regulation that covers but does not exceed the costs of the board and the department to review and process the application for the type of encroachment permit.~~

~~(2) Agree to pay the actual, reasonable costs of the board and the department to review and process the application.~~

~~SECTION 5. Section 8710.3 is added to the Water Code, to read:~~

~~8710.3. (a) No state or local governmental agency may commence construction of any flood facility or flood facility improvement, including, but not limited to, conservation and recreation elements, that encroaches on a flood control facility, work, or land required for a State Plan of~~



~~Flood Control under the jurisdiction of the board without obtaining a flood facility improvement permit from the board.~~

~~(b) At the board's discretion, any flood facility improvement permit issued shall be subject to conditions necessary to ensure compliance with this part, including, but not limited to, the condition that the permit be recorded to the affected parcels with the county recorder's office.~~

~~(c) Levee maintenance and minor repairs by a local public agency that operates and maintains facilities and works on behalf of the board do not require a permit pursuant to this section.~~

~~(d) Any person or public agency requesting approval of a flood facility improvement permit shall, at the discretion of the board, do either of the following:~~

~~(1) Submit a reasonable filing fee prescribed by the board pursuant to regulation that covers but does not exceed the costs of the board and the department to review and process the application for the type of flood facility improvement permit.~~

~~(2) Agree to pay the actual, reasonable costs of the board and the department to review and process the application.~~

**SECTION 64.** Section 8710.4 is added to the Water Code, to read:

~~8710.4. (a) Prior to the implementation of filing fees or the adoption of a revised filing fee schedule by the board pursuant to Section 8710.2 or 8710.3, the board shall do all of the following:~~

~~(1) Perform a study to consider whether, and for what services, filing fees should be charged by the board. In conjunction with the study, the board shall hold at least two hearings, one in the Sacramento River watershed and one in the San Joaquin River watershed. In conducting this study, the board shall consider any relevant factor, including the following:~~

~~(A) The actual cost to the board of processing an application.~~

~~(B) Whether charging the actual cost would encourage applicants to bypass the filing system and instead install illegal encroachments.~~

~~(C) Whether the work to be performed is an improvement to the State Plan of Flood Control and inures to the benefit of the state.~~

~~(D) Whether different filing fees might be appropriate for different classes of applications.~~

~~(E) Such other factors as may be appropriate.~~

~~(2) Following the study, provide notice to the Senate Committee on Natural Resources and Water, the Assembly Committee on Water, Parks and Wildlife, and the Senate and Assembly Appropriations Committees.~~

~~(b) Any moneys collected pursuant to the filing fees imposed by Section 8710.2 or 8710.3 shall be deposited in the Central Valley Flood Protection Board Permit Fund, which is hereby created in the State Treasury. Moneys in the fund shall be available upon appropriation by the Legislature for the purposes of Sections 8710.2 and 8710.3.~~

**SECTION 7.** Section 8732 of the Water Code is amended to read:

**8732. Hearing officers.**

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.~~State.



APPROVED BY THE BOARD  
April 5, 2013 (WITH PERMIT SECTIONS REMOVED)

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 thirty (30) days after the action has become final.

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

SECTION 2. Article 6 (commencing with Section 8700) of Chapter 3 of Part 4 of Division 5 of the Water Code is repealed.

SECTION 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

8702. Interference with maintenance and operation of works – Enforcement Authority

(a) It is unlawful for any person, entity, 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 subsection (a).

8702.1 (a) If the board or the executive officer determines that any person, entity, 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, entity, 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 (a) for facilities within the board’s jurisdiction that the department or local agency operates and maintains if the board delegates it such authority. This subsection shall not require the local agency to accept the delegation.

(c) The Notice of Violation shall include 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 must be taken within a specified time period.

(4) Whether the person, entity, 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 corrective actions.

(5) A statement that the Notice of Violation will be referred to the board and that the failure to take the requested actions within the time specified may subject the person, entity, 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, entity, or public agency's expense and penalties; and

(6) The name, address, and telephone number of the State or local office that may be contacted for further information.

(d) The notice shall be served in accordance with Section 8702.5 and a copy transmitted to the board executive officer within five (5) days of its issuance. The board or the executive officer may amend the Notice of Violation and such amended Notice of Violation, once served in accordance with Section 8702.5, shall supersede any Notice of Violation previously issued for the same violation.

#### 8702.2 Cease and Desist Order

(a) If the board or executive officer determines that any person, entity, 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, entity, or public agency to whom or to which the Notice of Violation was issued to cease and desist. Nothing shall prevent the board or executive office from issuing a Cease and Desist Order in cases where it deems a Notice of Violation not to be in the best interest of the state.

(b) The Cease and Desist Order shall:

(1) Include a copy of the Notice of Violation.

(2) Be effective upon its issuance and served immediately pursuant to Section 8702.5.

(3) Require that the corrective actions described in the Notice of Violation be completed within a specified time period or the person, entity, or public agency will be subject to an Enforcement Order as described in Section 8702.3.

(4) Provide 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) The meeting noticed pursuant to subsection (b)(4) shall comply with the following:

(1) The meeting shall be scheduled at least thirty (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 the person, entity, or public agency subject to the Cease and Desist Order fails to appear at the meeting, the Cease and Desist Order may be approved by default.

#### 8702.3 Enforcement Hearing and Order

(a) If the board or executive officer determines that any person, entity, 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 the following:

(1) Notice of the hearing shall be provided at least thirty (30) days before the hearing is scheduled pursuant to Section 8702.5, 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, entity, 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:

(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 8703.

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

(5) 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 8702.5.

(e) A person, entity, or public agency against whom 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 and restoration pursuant to this part, the board, its contractor, or its designee may conduct the removal and restoration, the costs of which will be collected from the responsible person, entity, or public agency by whatever legal remedies are available, including the placement of a lien on the property owned by the person, entity, or agency responsible for the violation pursuant to Section 8704. No removal or restoration actions shall be taken by the board until after the time for judicial review has passed.

(g) This section does not authorize the issuance of an Enforcement Order as to any lawful activity undertaken by a local public agency pursuant to Section 8709.

8702.4. Removal or modification of previously permitted encroachments (current 8709.4)

(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, 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 structures is not subject to this section.

(c) The removal of previously permitted encroachments shall not be subject to administrative or civil penalties pursuant to 8703 or 8703.1.

#### 8702.5 Notice

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

(a) Hand delivery;

(b) Certified Mail; or

(c) If the person, entity, or agency cannot be reached or reasonably notified by other means, by posting a copy of the notice or order on the encroachment or property.

#### 8703 Civil Penalties (current 8709.7)

(a) Civil penalties may be imposed by a court of competent jurisdiction against any person, entity, 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 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, entity, 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 previously issued by the board or executive officer in an amount that shall not be less than one thousand dollars (\$1,000), nor more than fifteen thousand dollars (\$15,000), per day for each day in which the encroachment persists.

(c) In determining the amount of liability under sections (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 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, entity, 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 deems 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 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.

#### 8703.1 Administrative Penalties

(a) Administrative penalties may be imposed by the board in the same manner as civil penalties described in Section 8703, upon an enforcement hearing and issuance of an Enforcement Order pursuant to Section 8702.3, but may 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 must make express its rationale for the amount and specifically address the factors in 8703(c).

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

(d) No person, entity, or agency shall 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.

#### 8703.2 Flood Risk Management Fund

The Flood Risk Management Fund shall be maintained in the State Treasury. All funds received from penalties pursuant to Sections 8703 and 8703.1 of this article shall be paid into the Fund. Upon appropriation by the legislature, the monies in the Fund shall be expended by the board to carry out enforcement pursuant to this part, including for the costs of the abatement and restoration of violations and related litigation.

#### 8704 Lien Authority

(a) Pursuant to Section 8702.3(f), 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, entity, or agency's property responsible for the violation is located, to recover any and all:

(1) Costs incurred by the board, executive officer, department, local agency, or contractor in abating, removing and restoring a violation, including costs incurred in seeking removal, abatement and restoration pursuant to this part;

(2) Costs incurred in the summary abatement of emergencies; and

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

(b) The lien shall have the same force, effect and priority as a judgment lien.

(c) Prior to 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 twenty (20) days prior to the hearing pursuant to 8702.5.

(2) The hearing required by this Section may be satisfied by an Enforcement Order hearing pursuant to 8702.3 or, in the summary abatement of emergencies, a hearing pursuant to 8709.

#### 8705. Concurrent and additional remedies (current 8704 and 8705 combined)

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 which 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.

#### 8706. Actions to ensure the free flow of water (current 8706 and 8707 combined)

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, or embankment or other structure or obstruction which shall be intersected, traversed or crossed by any by-pass, 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. The board may in the case of existing works compel the removal or alteration of structures or obstructions that impede the free flow of water.

#### 8707. Public nuisance; abatement (current 8709)

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 such nuisance.

#### 8708 Attorneys Fees

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 Section 8709(b) or removal or restoration costs as the board's designee under Section 8702.3(f), the board, attorney general, or local agency shall be awarded attorney's fees and costs, including any fees and costs incurred by its agents.

#### 8709 Summary Abatement of Emergencies

(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 thirty (30) days after the emergency action has been commenced.

(c) After a public hearing, by request or by its own motion, any entity that has carried out 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.

SECTION 4. Section 8732 of the Water Code is amended to read:

8732. Hearing officers.

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.



