

**Meeting of the Central Valley Flood Protection Board**  
**May 23, 2014**  
**Staff Report**

Adoption of the California Code of Regulations  
Title 23, Division 1 Revisions  
Regular Rulemaking Hearing

---

**1.0 – ITEM**

Conduct the public hearing, accept public comments, and consider approval of Resolution No. 2014-21 to adopt revisions to the California Code of Regulations Title 23, Division 1 related to evidentiary hearings, enforcement actions, and reconsideration. The proposed regulatory amendments are necessary to implement SB 753, which expands the Boards' enforcement authority.

**2.0 – BACKGROUND**

The California Water Code was amended by Senate Bill 753 (Steinberg) on January 1, 2014 to expand the enforcement authority of the Board. For example, SB 753 granted the Board the authority to issue administrative penalties for code violations. Previously, the Board had to win a civil suit in superior court to issue penalties. Now, the Board can impose administrative penalties in the same manner as civil penalties. The Board was also granted the authority to record a lien to collect costs incurred with abating, removing or restoring a violation. In addition to these expanded authorities, the bill directed the Board to adopt emergency regulations necessary to implement the law.

Emergency regulations to implement the new enforcement authorities granted by Senate Bill 753 were adopted by the Board and made effective by the Secretary of State on January 9, 2014. The emergency regulations were written by the Board's regulations committee and distributed to interested parties for comment prior to being made effective. Comments were received from the California Farm Bureau and the California Central Valley Flood Control Association. Based on these comments, changes were made to the text of the regulations prior to being adopted.

**3.0 – REGULAR RULEMAKING**

To create the regular rulemaking file, staff has prepared the proposed regulations text, an initial statement of reasons, and a notice of proposed rulemaking. The proposed regulation text is the same as the text used for the emergency regulations. The text is unchanged and has been available on our website since it was approved by the Office of Administrative Law on January 9, 2014. An initial statement of reasons was written

to explain why the regulations are amended as proposed in the text. The initial statement of reasons also contains an economic impact assessment, a consideration of alternatives, and an assessment of compatibility of the proposal with federal regulations. A notice of proposed rulemaking was prepared to announce the availability of the proposed regulations for public review and comment. Copies of these documents are attached to this staff report as attachments B through D.

The notice of proposed rulemaking was published in the California Regulatory Notice Register on April 4, 2014. This publication started the minimum 45 day public review and comment period for adoption of the regulations. At the same time, copies of the proposed regulations text, initial statement of reasons, and notice of proposed rulemaking were posted on the Board's website. A hearing date for the regulations adoption was set in the notice for Friday, May 23, 2014 at 1:00 PM. Oral or written testimony may be given by any interested person on the day of the hearing. Those unable to attend the hearing but interested in having their written comments considered by the Board may submit them prior to 5:00 PM on Tuesday, May 20, 2014.

#### **4.0 – PUBLIC COMMENTS**

All public comments will be presented to the Board at the public hearing. Included in the rulemaking record are the written public comments that were made during the development of the emergency regulations. These written comments were considered and responded to by the regulations committee. A copy of the public comments and the response letters addressing each comment are attached to this staff report as attachments E through H. Comments received at the public hearing may be responded to by oral testimony recorded in the written transcript of the meeting. A summary and response to each comment is required to demonstrate that the Board has understood and considered all relevant material presented to it before adopting a regulation.

Following the public hearing, the Board may adopt the proposed regulations text and initial statement of reasons or may modify them. If the final text of the regulations is unchanged or contains only non-substantial changes from the text that was publically noticed, then the Board can adopt the regulations at the hearing. If changes are made to the regulations that are substantial and sufficiently related to the initial proposal, then the Board must mail a notice of proposed changes to all interested parties and allow an additional 15 day –public comment period. The Board can then adopt the revised regulations as a consent item at a later meeting. An additional public hearing is not required.

## **5.0- OFFICE OF ADMINISTRATIVE LAW REVIEW**

Following adoption of the regulations by the Board, staff will prepare the final rulemaking record. The rulemaking record is a binder of the documents attached to this staff report and includes the transcript of the adoption hearing and a final statement of reasons. The final statement of reasons is an update, if any, to the information in the initial statement of reasons and a complete and adequate summary and response to comments. The attached comment response letters and hearing transcript can serve as the summary and response to comments.

The rulemaking record is then submitted to the Office of Administrative Law for review. OAL has 30 working days to review the rulemaking record for conformance with the Administrative Procedures Act. If accepted, the proposed regulations are filed with the Secretary of State and printed in the California Code of Regulations. If rejected, the regulations are returned to the Board for revisions. The Board will then revise the text, mail a notice of proposed changes, and hold an additional 15-day public comment period before resubmission to OAL.

## **6.0 – STAFF RECOMMENDATION**

### **Board Staff is Recommending the Board:**

- Determine that all comments received by the Board concerning the proposed regulations have been considered and responded to either in a written response letter or in testimony at the public hearing which has been recorded in the written transcript of the meeting.
- Approve Resolution 2014-21 adopting the proposed Text of Regulations for revisions to the California Code of Regulations Title 23, Division 1 related to evidentiary hearings, enforcement actions, and reconsideration.
- Direct the Executive Officer to prepare the final rulemaking record which includes a final statement of reasons stating any changes, if any, made to the initial statement of reasons and a summary and response to comments.
- Direct the Executive Officer to submit the final rulemaking record to the California Office of Administrative Law to be reviewed and made effective.

## **7.0 – LIST OF ATTACHMENTS**

- A. Resolution 2014-21 Adoption of Revisions to the California Code of Regulations
- B. California Regulatory Notice Register – Notice of Proposed Rulemaking

- C. Initial Statement of Reasons
- D. Proposed Regulations Text
- E. Comments by Downey Brand for the CA Central Valley Flood Control Association
- F. Board Response to Comments from Downey Brand
- G. Comments by Justin Fredrickson for California Farm Bureau
- H. Board Response to Comments from Justin Fredrickson

*Presented by Staff: Curt Taras*

*Legal Counsel: Leslie Gallagher*

*Board Committee Members: Emma Suarez, Clyde MacDonald*

STATE OF CALIFORNIA  
THE RESOURCES AGENCY  
CENTRAL VALLEY FLOOD PROTECTION BOARD

RESOLUTION NO. 2014-21

Adoption of Revisions to the California Code of Regulations Title 23, Division 1  
Related to Evidentiary Hearings, Enforcement Actions, and Reconsideration

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

**WHEREAS**, the California Water Code Section 8700 states it is “unlawful for any person or public agency to interfere with, obstruct the performance, maintenance, or operation of, or otherwise take actions that may adversely affect facilities of the State Plan of Flood Control, designated floodways, or streams that are regulated by the Board”; and

**WHEREAS**, the Board’s enforcement regulations are provided in the California Code of Regulations (CCR), Title 23, Division 1 to require permits and enforce standards for the erection, maintenance, and operation of levees, channels, and other flood control works within its jurisdiction, including, but not limited to, standards for encroachments, construction, vegetation, and erosion control measures; and

**WHEREAS**, the California Water Code was amended by Senate Bill 753 (Steinberg) on January 1, 2014 to expand the enforcement authority of the Board and among other things, grant the Board the authority issue administrative fines for code violations; and

**WHEREAS**, California Water Code section 8709 states, “[t]he Board shall adopt emergency regulations necessary to implement this article in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of emergency regulations shall be deemed an emergency that calls for the immediate action to avoid serious harm to the public peace, health, safety, or general welfare; and

**WHEREAS**, Emergency regulations to implement the new enforcement authorities granted by Senate Bill 753 were adopted by the Board and made effective by the Secretary of State on January 9, 2014; and

**WHEREAS**, the process to make the emergency regulations approved as permanent regulations was initiated by publishing a notice of proposed rulemaking in the California Regulatory Notice Register on April 4, 2014; and

**WHEREAS**, copies of the proposed text of regulations, the initial statement of reasons, and the notice of proposed rulemaking were publically available on the Board's website and available by request for a minimum 45 day public comment period; and

**WHEREAS**, a public hearing was held at the regularly scheduled meeting of the Board on May 23, 2014 to consider any public comments concerning the proposed regulations and to vote on the adoption of the regulations; and

NOW, THEREFORE, BE IT RESOLVED THAT,

1. All comments received by the Board concerning the proposed regulations have been considered and responded to either in a written response letter or in testimony at the public hearing which has been recorded in the written transcript of the meeting ;
2. The final text of regulations is unchanged or contains only non-substantial changes from the text that was publicly noticed prior to the hearing;
3. The Board adopts the proposed Text of Regulations for revisions to the California Code of Regulations Title 23, Division 1 related to evidentiary hearings, enforcement actions, and reconsideration ;
4. The Board directs the Executive Officer to prepare the final rulemaking record which includes a final statement of reasons stating any changes, if any, made to the initial statement of reasons and a summary and response to comments;
5. The Board directs the Executive Officer to submit the final rulemaking record to the California Office of Administrative Law to be reviewed and made effective.

PASSED AND ADOPTED by vote of the Board on \_\_\_\_\_, 2014

---

William Edgar  
President

---

Jane Dolan  
Secretary



# California Regulatory Notice Register

REGISTER 2014, NO. 14-Z

PUBLISHED WEEKLY BY THE OFFICE OF ADMINISTRATIVE LAW

APRIL 4, 2014

## PROPOSED ACTION ON REGULATIONS

### TITLE 2. PUBLIC EMPLOYEES' RETIREMENT SYSTEM

*External Investment Resource Conflict-of-Interest — Notice File No. Z2014-0325-05* ..... 593

### TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

*Pest Ratings and Mitigating Actions — Notice File No. Z2014-0325-06* ..... 595

### TITLE 4. CALIFORNIA SCHOOL FINANCE AUTHORITY

*Charter School Facility Grant Program — Notice File No. Z2014-0320-01* ..... 597

### TITLE 15. DEPARTMENT OF CORRECTIONS AND REHABILITATION

*Obscene Material — Notice File No. Z2014-0325-04* ..... 602

### TITLE 15. DEPARTMENT OF CORRECTIONS AND REHABILITATION

*Testing Controlled Substances/Inmate Discipline — Notice File No. Z2014-0321-01* ..... 605

### TITLE 18. BOARD OF EQUALIZATION

*Business Inventory Exemption — Notice File No. Z2014-0325-02* ..... 607

### TITLE 23. CENTRAL VALLEY FLOOD PROTECTION BOARD

*Enforcement Action Regulations — Notice File No. Z2014-0325-03* ..... 613

## GENERAL PUBLIC INTEREST

### DEPARTMENT OF HEALTH CARE SERVICES

*Year 2 Diagnosis Related Group (DRG) Payment Parameters* ..... 616

### DEPARTMENT OF PUBLIC HEALTH

*Public Hearings — Preventive Health and Health Services Block Grant (Increased Funding for California for Federal Fiscal Year (FFY) 2014* ..... 617

(Continued on next page)

***Time-  
Dated  
Material***

**TITLE 23. CENTRAL VALLEY FLOOD  
PROTECTION BOARD**

**AMENDMENTS TO THE CALIFORNIA CODE  
OF REGULATIONS DIVISION 1 REGARDING  
CHANGES TO ENFORCEMENT ACTIONS**

**NATURE OF PROCEEDING**

NOTICE IS HEREBY GIVEN that the Central Valley Flood Protection Board (Board) proposes to adopt the following Sections in Division 1, Chapter 1 of Title 23, California Code of Regulations:

Section 13.2 (Evidentiary Hearings before a Hearing Officer or Committee)

Section 21 (Conduct Subject to Enforcement)

Section 22 (Settlement of Violations)

Section 23 (Delegation of Enforcement Authority)

Section 24 (Board Approval of Cease and Desist Orders)

Section 25 (Enforcement Order Hearing Procedures)

Section 27 (Emergency Actions)

Section 29 (Lien Procedures)

In addition, the Board proposes to amend the following sections in Division 1, Chapter 1 of Title 23, California Code of Regulations:

Section 13 (Evidentiary Hearings)

Section 13.1 (Conduct and Order of Evidentiary Hearing Proceedings)

Section 13.2 renumbered to 13.3 (Consent Calendar)

Section 20 (Purpose and Authority)

Section 21 renumbered to 26 (Maintenance Activities)

Section 26 renumbered to 28 (Permit Revocation)

Section 28 renumbered to 30 (Reconsideration)

In addition, the Board proposes to repeal the following sections in Division 1, Chapter 1 of Title 23, California Code of Regulations:

Section 23 (Notice of Violation)

Section 24 (Cease and Desist Orders Issued by the Executive Officer)

Section 25 (Cease and Desist Order Board Hearing Procedures)

Section 27 (Nuisance and Civil Penalty Provisions)

**PUBLIC PROCEEDINGS**

A public hearing regarding this proposal is scheduled on:

Friday, May 23, 2014 at 1:00 p.m.  
(Check website ([www.cvfpb.ca.gov](http://www.cvfpb.ca.gov)) for agenda 10 days prior)

Hearing Location:  
City of Sacramento City Hall  
First Floor Council Chamber  
915 I Street,  
Sacramento, CA 95814

Oral or written testimony may be given by any interested person on the day of the hearing. Following the public hearing, the Board may adopt the proposals substantially as described herein and in the Initial Statement of Reasons or may modify the proposals. Those unable to attend the hearing but interested in having their written comments considered by the Board may submit them prior to 5:00 p.m. on Tuesday, May 20, 2014 to:

Primary: Curt M. Taras, P.E., Supervising Engineer  
[curt.taras@water.ca.gov](mailto:curt.taras@water.ca.gov) 1-916-574-0684

Alternate: Eric R. Butler, P.E., Supervising Engineer  
[eric.butler@water.ca.gov](mailto:eric.butler@water.ca.gov) 1-916-574-0707

Central Valley Flood Protection Board  
3310 El Camino Avenue, Room 151  
Sacramento, California 95821  
(FAX) at (916) 574-0682

**AUTHORITY AND REFERENCE**

Authority and Reference Citations

California Water Code Section 8571 authorizes the Central Valley Flood Protection Board to adopt, amend, or repeal rules to promote the convenient, orderly, and just conduct of the business of the board and of the drainage district. The proposed rulemaking amends regulations regarding the Board's encroachment removal authority and are specifically authorized by Water Code § 8709.

**INFORMATIVE DIGEST**

Pursuant to the authority vested by California Water Code Sections 8571 and 8709 the purpose of the proposed rulemaking is for the Central Valley Flood Protection Board to implement an enforcement program to correct code violations on levees and in its flood control system. This comprehensive approach to en-



**CALIFORNIA REGULATORY NOTICE REGISTER 2014, VOLUME NO. 14-Z**

encroachment violations was preceded by the addition of Water Code Section 8579, the repeal and addition of Water Code Sections 8700–8709 and the amendment of Water Code Section 8732 under SB 753 (Steinberg 2013). Water Code §§ 8701 thru 8703 detail the enforcement action process. This process begins with the issuance of a notice of violation followed by a cease and desist order, an enforcement hearing, and an enforcement order. Water Code §§ 8704–8704.1 describe the civil penalties and administrative penalties that may be imposed for violations. Water Code § 8704.2 allows the Board to record a lien on the property where the violation is located.

**Regulatory Benefits**

The proposed regulatory action is anticipated to improve public safety through efficient enforcement of flood protection code violations. Unchecked encroachments and unauthorized activities on State Plan of Flood Control facilities can lead to deleterious effects on system performance during high water events. These rules implement a process for removal of those encroachments that is designed to be simple to understand and protects the due process rights of individuals, yet contains an adequate number of potential consequences to violators to gain maximum compliance.

**Evaluation of Compatibility**

The proposed regulations are consistent and compatible with existing state regulations. Any inconsistent existing regulations are being amended to comply with the 2013 Water Code amendments of SB 753 (Steinberg 2013) and are part of this rulemaking process. The regulations govern the enforcement of flood protection codes in the Central Valley. The Central Valley Flood Protection Board is the State agency responsible for regulating flood control in California's Central Valley. The proposed regulations were written by the Board to be compatible with its other regulations.

**Mandate on Local Agencies or School Districts**

The proposed regulatory action would not impose a mandate on local agencies or school districts. This regulatory action does not require reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. No non-discretionary costs or savings to local agencies or school districts will result from the proposed regulatory action.

**Costs or Savings to State Agencies**

The proposed regulatory action will not result in any increase in costs to the state and no additional staff is needed to implement the regulations.

**Costs or Savings in Federal Funding to the State**

The proposed regulatory action will not result in any increase in direct costs or savings in federal funding to the state because the Board's enforcement program does not receive federal funding.

**Effect on Housing Costs**

The proposed regulations have no anticipated effect on housing costs.

**Cost Impacts on a Representative Private Person or Business**

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

**ECONOMIC IMPACT ASSESSMENT/ANALYSIS**

The proposed regulations implement an enforcement program allowed by the 2013 changes to the Water Code granting the Central Valley Flood Protection Board greater encroachment removal authority over the State Plan of Flood Control facilities. No economic impact to businesses, housing or other government agencies is anticipated by these changes. The economic impact analysis for the proposed regulations considered the following:

- A) The creation or elimination of jobs within the state.  
The proposed flood protection enforcement regulations are for the enforcement of flood protection codes on levees and floodways. The proposed flood protection enforcement regulations are not expected to create or eliminate jobs within the state.
- (B) The creation of new businesses or the elimination of existing businesses within the state.  
The proposed flood protection enforcement regulations are for the enforcement of flood protection codes on levees and floodways. The proposed flood protection enforcement regulations are not expected to create or eliminate businesses within the state.
- (C) The expansion of businesses currently doing business within the state.  
The proposed flood protection enforcement regulations are for the enforcement of flood protection codes on levees and floodways. The proposed regulations are not expected to affect expansion of businesses currently doing business within the State.
- (D) The benefits of the regulations to the health and welfare of California residents, worker safety, and the state's environment.

The proposed regulations will benefit the safety and welfare of California residents by helping to prevent floods caused by the catastrophic failure of a levee or flood control feature.

#### EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The proposed flood protection enforcement regulations are found to have no significant statewide adverse economic impact directly affecting business. These regulatory changes impact the California Central Valley Flood Protection Board enforcement program. The enforcement program ensures the State — Federal flood protection system of levees and floodways in the Central Valley are regulated and maintained to State and Federal Standards. The State–Federal flood protection system is a public facility and the enforcement program is a function of public agencies. The evidence supporting the finding of no significant statewide adverse economic impact directly affecting business is as follows:

- (A) The creation or elimination of jobs within the state.

The proposed flood protection enforcement regulations are for the enforcement of flood protection codes on levees and floodways. They are not expected to create or eliminate jobs within the state.

- (B) The creation of new businesses or the elimination of existing businesses within the state.

The proposed flood protection enforcement regulations are for the enforcement of flood protection codes on levees and floodways. They are not expected to create or eliminate businesses within the state.

- (C) The competitive advantages or disadvantages for businesses currently doing business within the state.

The proposed flood protection enforcement regulations are for the enforcement of flood protection codes on levees and floodways. They are not expected to create a competitive advantage or disadvantage for businesses currently doing business in the state.

- (D) The increase or decrease of investment in the state.

The proposed regulations are for the enforcement of flood protection codes on levees and floodways. They are not expected to increase or decrease investment in the state.

- (E) The incentives for innovation in products, materials, or processes.

The proposed regulations are for the enforcement of flood protection codes on levees and in floodways. They do not create an incentive or disincentive for innovation in products, materials, or processes.

- (F) The benefits of the regulations, including, but not limited to, benefits to the health, safety, and welfare of California residents, worker safety, and the state's environment and quality of life, among any other benefits identified by the agency.

The proposed regulations will benefit the safety and welfare of California residents by helping to prevent floods caused by the catastrophic failure of a levee or flood control feature.

#### BUSINESS REPORT AND SMALL BUSINESS

The proposed regulations do not require a report to be made or place a reporting requirement on any business. The proposed regulations do not affect small businesses. The proposed regulations enhance the enforcement authority of the State to prevent and remove safety code violations from levees and flood protection facilities which is not a small business activity.

#### CONSIDERATION OF ALTERNATIVES

A rulemaking agency must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed, would be as effective as, and less burdensome to, affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The Board held a public meeting on November 22, 2013 for interested persons prior to the approval of the emergency regulations. The Board considered and incorporated, where appropriate, the suggestions made during that public meeting including

**CALIFORNIA REGULATORY NOTICE REGISTER 2014, VOLUME NO. 14-Z**

those submitted in writing in advance of the meeting. No other alternatives proposed by interested persons, or otherwise considered by the Board, have been determined to be either more effective in carrying out the purpose for which the regulations are proposed, as effective as, or less burdensome to affected private persons.

#### COMPATIBILITY WITH FEDERAL REGULATIONS

The proposed flood protection enforcement regulations do not duplicate or conflict with federal regulations. The regulations support federal requirements that the local flood protection system sponsor assure the federal government that they will operate and maintain the flood protection system to federal standards. This includes enforcing the standards for encroachments. The State of California — Central Valley Flood Protection Board is the local sponsor of the flood protection system in California's Central Valley. Therefore, the adoption of these regulations satisfies the federal requirement for the State to enforce standards for the levees and floodways for which it is responsible.

#### AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Board has prepared and has available for public review an Initial Statement of Reasons for the proposed regulations, the text of the proposed regulations, and the rulemaking file. A copy of the Initial Statement of Reasons and a copy of the proposed text will be posted on the Board's website at [www.cvfpb.ca.gov](http://www.cvfpb.ca.gov) at least 45 days prior to adoption at the public hearing described above.

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Board adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention the contact persons indicated below. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

#### AVAILABILITY OF THE FINAL STATEMENT OF REASONS

After adoption, a copy of the Final Statement of Reasons will be published on the Board's website at [www.cvfpb.ca.gov](http://www.cvfpb.ca.gov). For those without internet access, the final statement of reasons will also be available through the contact persons listed below.

#### AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through our website at [www.cvfpb.ca.gov](http://www.cvfpb.ca.gov).

#### CONTACT PERSONS

Please direct requests for copies of the proposed text (the "express terms") of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to the contact persons using the following contact information.

Primary: Curt M. Taras, P.E., Supervising Engineer  
[curt.taras@water.ca.gov](mailto:curt.taras@water.ca.gov) 1-916-574-0684

Alternate: Eric R. Butler, P.E., Supervising Engineer  
[eric.butler@water.ca.gov](mailto:eric.butler@water.ca.gov) 1-916-574-0707

### GENERAL PUBLIC INTEREST

#### DEPARTMENT OF HEALTH CARE SERVICES

#### THE DEPARTMENT OF HEALTH CARE SERVICES IS UPDATING THE MEDI-CAL ALL PATIENT REFINED DIAGNOSIS RELATED GROUPS (APR-DRG) PAYMENT PARAMETERS

This notice is to provide information of public interest about the California Department of Health Care Services' (Department) intent to update Year 2 Diagnosis Related Group (DRG) payment parameters for general acute inpatient services provided by hospitals, including out-of-state hospitals and hospitals designated by Medicare as critical access hospitals.

On October 19, 2010, Senate Bill 853 added Section 14105.28 to the Welfare and Institutions Code. Section

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

**AMENDMENTS TO THE  
CALIFORNIA CODE OF REGULATIONS, TITLE 23, DIVISION 1  
RELATED TO THE WATER CODE CHANGES  
OF SENATE BILL 753 (STEINBERG 2013)**

**INITIAL STATEMENT OF REASONS**

**INTRODUCTION**

In 2013, Senate Bill 753 (Steinberg 2013) was signed into law. This bill added Water Code Section 8579, repealed and added Sections 8700-8709, and amended Section 8732, clarifying the authority of and adding new opportunities for the Central Valley Flood Protection Board (Board) to address unauthorized and nonconforming structures and activities on levees or other areas of the flood control system which are under the jurisdiction of the Board. The amended Water Code Section 8709 required the Board to make changes to its regulations to implement the new enforcement statutes. The proposed rulemaking in this package seeks to amend those sections of Title 23, Division 1, of the California Code of Regulations that cover enforcement actions.

Existing law authorized the Board, or 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 required 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 provided 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.

Senate Bill 753 added Water Code Section 8579, repealed and added Water Code Sections 8700-8709, and amended Section 8732. These new sections provided that it is unlawful for any person or public agency to interfere with, obstruct the performance, maintenance, or operation of, or otherwise take actions that may adversely affect facilities of the State Plan of Flood Control, designated floodways, or streams that are regulated by the board. The statutes further authorized the Board, following notice and opportunity for a hearing, 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.

The statutes authorized the Board, the executive officer, the Department of Water Resources, 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, flood system, 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, the bill authorizes the board or executive officer to issue an order directing that person or public agency to cease and desist, as specified. The bill required 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 shall hold an enforcement hearing and may, at the conclusion of the hearing, issue an enforcement order, as prescribed.

The statutes provided the Board with the authority, as prescribed, to take administrative or civil enforcement actions to abate and remedy any interference or potential interference with facilities of the State Plan of Flood Control, designated floodways, or streams that are regulated by the Board. The bill established the Flood Risk Management Fund in the State Treasury and requires all funds received from these penalties to be paid into the fund. This fund shall be available, upon appropriation by the Legislature, to be expended by the Board to carry out enforcement of these provisions. Finally, the bill required the Board to adopt emergency regulations necessary to implement these provisions.

The proposed rulemaking makes several changes in order to make the current regulations consistent with the new legislation. In addition to making changes related to SB 753, the purpose of the proposed rulemaking is to bring the regulations into conformance with current Board procedures. Pursuant to the authority vested by Water Code § 8571, the Board proposes changes to Division 1 of Title 23 of the California Code of Regulations. These proposed regulations will implement Water Code sections 8579, 8700-8709, and 8732.

The following discussion describes the specific purpose of each section of the proposed regulations and the reasons they are necessary:

**Proposed Amendments to Section 13 (Evidentiary Hearings):** This amendment deletes all references to a hearing officer because the rules regarding a hearing officer are now described in new section 13.2 Evidentiary Hearings before a Hearing Officer or Committee.

**Proposed Amendments to Section 13.1 (Conduct and Order of Evidentiary Hearing Proceedings):** This amendment deletes all references to a hearing officer because the rules regarding a hearing officer are now described in new section 13.2 Evidentiary Hearings before a Hearing Officer or Committee.

**Proposed Adoption of New Section 13.2 (Evidentiary Hearings before a Hearing Officer or Committee):** The purpose of this new section is to describe the rules regarding a hearing officer or board committee conducting an evidentiary hearing. Evidentiary hearings may now be conducted before a Board committee whereas previously they could only be held before the Board or a designated hearing officer.

**Proposed Amendments to Section 20 (Purpose and Authority):** This amendment adds administrative penalties, liens, and collection of attorney's fees to the list of authorities the Board holds.

**Proposed Replacement of existing Section 21 (Maintenance Activities) with New Section 21 (Conduct Subject to Enforcement):** The purpose of this section is to explain the actions that are subject to enforcement. It provides that violations of specific permits, regulations, and laws may be subject to investigation and enforcement action. It also states the investigation may be conducted by board staff, or a local maintaining agency, or the Department of Water Resources.

**Proposed Replacement of existing Section 22 (Emergency Impairment Response Authority) with New Section 22 (Settlement of Violations):** This section describes how a settlement of a violation in the enforcement process can be reached and then approved by the Board. It provides a method to resolve violations and conclude the enforcement process. It also provides the Board or Executive Officer the authority to enter into a tolling agreement to extend any statute of limitations while negotiations take place.

**Proposed Replacement of existing Section 23 (Notice of Violation) with New Section 23 (Delegation of Enforcement Authority):** This section explains how the authority to issue Notices of Violation may be delegated to the Department of Water Resources or to local maintaining agencies. The purpose of this delegation of enforcement authority is to empower local maintainers and inspectors with the ability to

initiate enforcement actions. Local maintaining agencies and inspectors usually are the first to discover a code violation on a levee or in a floodway. Therefore they should be empowered to issue a notice of violation to document the discovery and require its correction. The acceptance of this authority is dependent on the local maintaining agency or the Department of Water Resources signing and returning the Board's delegation letter.

**Proposed Replacement of existing Section 24 (Cease and Desist Orders Issued by the Executive Officer) with New Section 24 (Board Approval of Cease and Desist Orders):** This section describes the public meeting process where a Cease and Desist order may be contested. This process, while not a formal evidentiary hearing, gives the person or public agency subject to the order the opportunity to address the Board about it. The meeting is intended to give the respondent the opportunity to resolve the violation and give the Board oversight of cease and desist orders. It is the intention of this public meeting process to attempt to resolve violations at this step before progressing to a formal enforcement order hearing.

**Proposed Replacement of existing Section 25 (Cease and Desist Order Board Hearing Procedures) with New Section 25 (Enforcement Order Hearing Procedures):** This section describes the steps and process for a formal enforcement order hearing. The procedures are the same as they are for permitting evidentiary hearings with some specific differences. The differences are that enforcement order hearings use the terminology specific to enforcement cases and there are longer timeframes for the original hearing notice to be served on the respondent.

**Proposed Renumbering of existing Section 21 (Maintenance Activities) as Section 26:** This section, which states that removal of abandoned property is not subject to enforcement procedures, is mostly unchanged. The section is renumbered and the definition of "abandoned property" is further defined.

**Proposed Replacement of existing Section 27 (Nuisance and Civil Penalty Provisions) with New Section 27 (Emergency Actions):** This section allows the Board to take emergency actions to prevent an imminent failure of a levee, channel, floodway, stream bank, or flood control feature. If the actions involve the removal or modification of an encroachment then the person or public agency maintaining that encroachment may request a hearing. The entity that conducts the emergency action may also request a hearing to seek reimbursement of its costs. The purpose of these emergency action provisions is to give the Board the authority to take action in an emergency.

**Proposed Renumbering of existing Section 26 (Permit Revocation) as Section 28:** This section is renumbered and amended to make the revocation hearing procedures



the same as enforcement hearing procedures. The reason the procedures for permit hearings, enforcement hearings, and permit revocation hearings are generally the same is so the Board can be efficient and not have to change its procedures for different hearings.

**Proposed Adoption of New Section 29 (Lien Procedures):** This section is added to explain how a lien is to be recorded against a property and the lien hearing procedures to contest it. A lien is recorded to recover the costs incurred to abate, remove, and restore a violation including attorney's fees. A hearing is conducted to give the property owner an opportunity to contest the lien. The purpose of the lien procedures is to define the information required on the lien notice and to describe how the lien is discharged.

**Proposed Renumbering of existing Section 28 (Reconsideration) as Section 30:** This section is renumbered and amended to state that enforcement orders are not subject to reconsideration but are subject to judicial review. The reason enforcement orders are not subject to reconsideration is because at that point in the enforcement process several hearings have been held to reach the final decision to issue an enforcement order. The time for reconsideration would delay the board's decision from being final. The enforcement order decision needs to be made final before the respondent can seek judicial review.

#### **TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS.**

This Statement of Reasons relied on the Legislative Counsel's Digest for Senate Bill 753 dated February 22, 2013 and on a Senate Floor Bill Analysis of SB 753 dated August 6, 2013.

#### **ECONOMIC IMPACT ASSESSMENT/ANALYSIS**

The proposed regulations implement an enforcement program allowed by the 2013 changes to the Water Code granting the Central Valley Flood Protection Board greater encroachment removal authority over the State Plan of Flood Control facilities. No economic impact to businesses, housing or other government agencies is anticipated by these changes. The economic impact analysis for the proposed regulations considered the following:

##### **A) The creation or elimination of jobs within the state.**

The proposed flood protection enforcement regulations are for the enforcement of flood protection codes on levees and floodways. The proposed flood protection enforcement regulations are not expected to create or eliminate jobs within the state.



(B) The creation of new businesses or the elimination of existing businesses within the state.

The proposed flood protection enforcement regulations are for the enforcement of flood protection codes on levees and floodways. The proposed flood protection enforcement regulations are not expected to create or eliminate businesses within the state.

(C) The expansion of businesses currently doing business within the state.

The proposed flood protection enforcement regulations are for the enforcement of flood protection codes on levees and floodways. The proposed regulations are not expected to affect expansion of businesses currently doing business within the State.

(D) The benefits of the regulations to the health and welfare of California residents, worker safety, and the state's environment.

The proposed regulations will benefit the safety and welfare of California residents by helping to prevent floods caused by the catastrophic failure of a levee or flood control feature.

#### EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The proposed flood protection enforcement regulations are found to have no significant statewide adverse economic impact directly affecting business. These regulatory changes impact the California Central Valley Flood Protection Board enforcement program. The enforcement program ensures the State – Federal flood protection system of levees and floodways in the Central Valley are regulated and maintained to State and Federal Standards. The State-Federal flood protection system is a public facility and the enforcement program is a function of public agencies. The evidence supporting the finding of no significant statewide adverse economic impact directly affecting business is as follows:

(A) The creation or elimination of jobs within the state.

The proposed flood protection enforcement regulations are for the enforcement of flood protection codes on levees and floodways. They are not expected to create or eliminate jobs within the state.

(B) The creation of new businesses or the elimination of existing businesses within the state.

The proposed flood protection enforcement regulations are for the enforcement of flood protection codes on levees and floodways. They are not expected to create or eliminate businesses within the state.

(C) The competitive advantages or disadvantages for businesses currently doing business within the state.

The proposed flood protection enforcement regulations are for the enforcement of flood protection codes on levees and floodways. They are not expected to create a competitive advantage or disadvantage for businesses currently doing business in the state.

(D) The increase or decrease of investment in the state.

The proposed regulations are for the enforcement of flood protection codes on levees and floodways. They are not expected to increase or decrease investment in the state.

(E) The incentives for innovation in products, materials, or processes.

The proposed regulations are for the enforcement of flood protection codes on levees and in floodways. They do not create an incentive or disincentive for innovation in products, materials, or processes.

(F) The benefits of the regulations, including, but not limited to, benefits to the health, safety, and welfare of California residents, worker safety, and the state's environment and quality of life, among any other benefits identified by the agency.

The proposed regulations will benefit the safety and welfare of California residents by helping to prevent floods caused by the catastrophic failure of a levee or flood control feature.

## **CONSIDERATION OF ALTERNATIVES**

A rulemaking agency must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed, would be as effective as, and less burdensome to, affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The Board held a public meeting on November 22, 2013 for interested persons prior to the drafting of this Initial Statement of Reasons. The Board considered and incorporated, where appropriate, the suggestions made during that public meeting including those submitted in writing in advance of the meeting. No other alternatives proposed by interested persons, or otherwise considered by the Board, have been determined to be either more effective in carrying out the purpose for which the regulations are proposed, as effective as, or less burdensome to affected private persons.

## **COMPATIBILITY WITH FEDERAL REGULATIONS**

The proposed flood protection enforcement regulations do not duplicate or conflict with federal regulations. The regulations support federal requirements that the local flood protection system sponsor assure the federal government that they will operate and maintain the flood protection system to federal standards. This includes enforcing the standards for encroachments. The State of California – Central Valley Flood Protection Board is the local sponsor for the flood protection system in California's Central Valley. Therefore, the adoption of these regulations satisfies the federal requirement for the State to enforce standards for the levees and floodways for which it is responsible.

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

**Proposed Text of Regulations  
In Title 23, California Code of Regulations, Division 1 Article 3,  
Adopt Section 13.2, Amend 13, 13.1, 13.2 (renumbered to 13.3)**

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

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

**§ 13. Evidentiary Hearings.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

### **§ 13.~~23~~. Consent Calendar.**

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

(b) Any matter for which there are no speakers in opposition, including permit matters, may be placed on the board's consent calendar in accordance with Section 13.~~23~~, unless one of the following occurs to remove the item from the consent calendar:

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

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

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

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

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

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

**Proposed Text of Regulations**

**In Title 23, California Code of Regulations, Division 1, Article 4**

**Adopt Sections 21, 22, 23, 24, 25, 27, 29**

**Amend Sections 20, 21 (renumbered to 26), 26 (renumbered to 28)**

**Repeal Sections 23, 24, 25, 27**

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

**Title 23. Waters**

**Division 1. Central Valley Flood Protection Board**

**Chapter 1. Organization, Powers and Standards**

**Article 4. Enforcement Actions**

**§ 20. Purpose and Authority.**

(a) The board has the authority ~~pursuant to Water Code section 8710~~ to require permits and enforce standards for the erection, maintenance, and operation of levees, channels, and other flood control works within its jurisdiction, including, but not limited to, standards for encroachments, construction, vegetation, and erosion control measures. ~~In addition, the board has enforcement authority under Water Code sections 8709.5 and 8709.6 to issue Cease and Desist Orders, the violation of which may subject the violator to fines or penalties pursuant to Water Code section 8709.7.~~

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

(1) ~~Notice of Violation~~ Removal, modification or abatement of a violation, at the violator's cost;

(2) ~~Cease and Desist Order~~ Restoration;

(3) ~~Restoration Order~~ Administrative penalties;

(4) Permit revocation; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **§ 22. Settlement of Violations**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) The notice shall contain the information required by section 13(f), describe the violation, identify any statute(s) or regulation(s) the respondent is alleged to have

violated; and include a proposed enforcement order, which shall set forth the amount of proposed administrative penalties.

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

by the board President. However, all parties shall be given an opportunity to present argument related to the proposed order.

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

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

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

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

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

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

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

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



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

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

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

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

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

**§ 27. Emergency Action.**

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

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

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

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

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

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

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

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

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

### **~~§ 23. Notice of Violation.~~**

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

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

- ~~(1) Undertaking or threatening to undertake any activity that may encroach on levees, channels, or other flood control works under the jurisdiction of the board;~~
- ~~(2) Owning, undertaking, or maintaining any work in violation of or inconsistent with any condition of any permit previously issued by or subject to the jurisdiction of the board; or~~
- ~~(3) Any violation of any requirement in Part 4 of Division 5 of the Water Code, including but not limited to:~~
  - ~~(A) Owning, undertaking, or maintaining any work that requires a permit or other approval from the board without securing such permit or approval;~~
  - ~~(B) Owning, undertaking, or maintaining any work in violation of Title 23, Division 1 of the California Code of Regulations; or~~
  - ~~(C) Owning, undertaking, or maintaining any work that is inconsistent with applicable federal regulations where the board has signed assurances with the U.S. Army Corps of Engineers that it will comply with such regulations.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- ~~(A) Removal of the work;~~
- ~~(B) Alteration of the work;~~
- ~~(C) A restoration order;~~
- ~~(D) Implementation of environmental mitigation;~~
- ~~(E) Filing an application for a permit pursuant to this division;~~
- ~~(F) Other terms and conditions the board may determine to be necessary, including but not limited to, inspection by the board or its authorized representatives;~~
- ~~(G) An order that if the respondent does not comply with the decision within a specified amount of time, the board, local maintaining agency, authorized representatives of the board, or a contractor hired by the board may take abatement actions, such as physical removal, and the board may recover any costs incurred from the respondent;~~
- ~~(H) An order requiring the respondent to file data as requested by the board or its authorized representatives.~~

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

## **§ 268. Permit Revocation.**

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

- (1) The permit or approval was obtained by misrepresentation or fraud;
- (2) The permit or approval was approved or issued in error;
- (3) One or more of the conditions of the permit or approval have not been satisfied or have been violated;
- (4) One or more of the conditions of the permit or approval anticipate revocation if certain terms are met, and those terms have been met;

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

## § 29. Lien Procedures

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

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

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

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

**Proposed Text of Regulations  
In Title 23, California Code of Regulations, Division 1, Article 4.1,  
Amend Section 28 (renumbered to 30) to read as follows:**

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

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

**§ ~~28~~30. Reconsideration.**

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

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

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

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

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

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

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

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

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

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

December 30, 2013

**By U.S. Mail and Email (curt.taras@water.ca.gov)**

Mr. Curt Taras  
Central Valley Flood Protection Board  
3310 El Camino Avenue, Room151  
Sacramento, California 95821

Re: **Notice of Proposed Emergency Regulations**

Dear Mr. Taras:

On behalf of the California Central Valley Flood Control Association, I am submitting these comments on the Central Valley Flood Protection Board's (Board) proposed emergency regulations. We request that these changes be made to the proposed regulations, including to the regulations during their emergency status if possible. We appreciate the good work of the Board to "step-up" enforcement actions and believe these new regulations, especially with the clarifications proposed below, will allow the Board to do this.

The proposed changes below are made to the Board's proposed regulations. The redline and strikeout below assumes that the Board's proposed changes were all accepted. Thus, all of the edits below are edits to the Board's proposals.

Section	Proposed change	Explanation
13.2(c)(2)	The decision on the matter shall not become final until the board approves or rejects the hearing officer or committee's proposed <b><u>findings or</u></b> decision. The board's review of the hearing officer or committee's proposed <b><u>findings and</u></b> decision does not reopen the hearing and no new evidence shall be submitted unless allowed by the board president.	Throughout the remainder of the section, the findings and decision are always talked about together. It is not clear why the phraseology was changed in this subsection.
20 (b)	. . . that it will comply with such law and <b><u>or</u></b> regulations, the board has . . .	Earlier in the paragraph, law and regulations are referred to in the

	.	disjunctive (using or) and this should be changed for consistency.
21(b)(3)(iii)	. . . . that it will comply with such law and <b>or</b> regulations.	Earlier in the paragraph, law and regulations are referred to in the disjunctive (using or) and this should be changed for consistency.
22(c)	Once the board has taken action on a cease and desist order, any settlement of the underlying violation shall <b><u>require board approval and shall</u></b> be placed on the board's consent calendar pursuant to section 13.3 of these regulations, for approval by the board if allowed under Section 13.3.	As phrased, this section appeared to be overriding the limitations on what may be placed on consent under 13.3. Assuming that overriding was not intended, this change will allow the two to harmonize.
24(a)	. . . .location of a public meeting before <b>of</b> the board at which time. . . .	Public meetings are not before the board; rather they are meetings of the board.
24(b)	If the person or public agency subject to the order fails to appear <b>at the</b> <b><u>noticed public meeting</u></b> , the board may approve issuance. . . .	Adds clarity as to what the person or public agency should appear for.
25(d)	. . . . In these situations, less notice may be provided, but in all cases the original notice <b><u>of an enforcement hearing</u></b> must be <b><u>provided</u></b> minimum of ten (10) calendar days prior to the hearing. . . .	Adds clarity.
25(h)	. . . . If the hearing is held by a committee of the board, the committee shall follow the hearing officer procedures in section 13.2. . . .	It is not clear what the meaning or purpose of the third sentence is. The first sentence requires that any single hearing officer be a board member. The second sentence allows a hearing to be conducted by a committee. The third sentence requires that a committee follow the rules of 13.2. By

		stating this in this way, it suggests that a hearing officer (Board member) does not need to follow 13.2. However, by its own terms 13.2 appears to apply to all evidentiary hearings already. Therefore, we suggest deleting the last sentence that appears to add nothing but confusion.
25(l)	At the conclusion of the hearing before the board <b><u>or upon consideration by the board under Section 13.2(c)(i) of a hearing officer or committee's proposed findings and decision</u></b> , to comply with the requirement in section . . . .	This change is necessary in the event that the board itself does not hold the hearing, but rather is considering proposed findings and decision of a hearing officer or committee.
25(l)(i)	Immediately adopt all or part of the staff report or enforcement order <b><u>or proposed findings or decision</u></b> ; or	This change is necessary in the event that the board itself does not hold the hearing, but rather is considering proposed findings and decision of a hearing officer or committee.
25(l)(ii)	Amend the staff report or enforcement order <b><u>or proposed finding or decision</u></b> as it deems appropriate . . . .	This change is necessary in the event that the board itself does not hold the hearing, but rather is considering proposed findings and decision of a hearing officer or committee.
25(l)(iii)	<b><u>Where the board has acted as a hearing body</u></b> , Direct direct a board member, along with board legal counsel . . . .	This change is necessary in the event that the board itself does not hold the hearing, but rather is considering proposed findings and decision of a hearing officer or committee.
26(a) and (b)		Do not make proposed edits to these subsection references here.

		This appears to be a carryover edit that is no longer necessary.
27(c)	. . . . encroachment on a flood system improvement <b>facility</b> or activity maintained by a person. . . .	This provision should not apply to only improvements to the system, but rather should apply to any facility of the system.
29(a)(1)	identification of the board as the entity on whose behalf the lien is <b>to be</b> imposed.	The lien has not yet be imposed, so the language should be clarified,
29(a)(3)	a legal description and assessor's parcel number for the real property upon which the lien is to be placed <b>imposed</b> .	This change will mirror existing language (impose) from Section 29(a)(1), rather than the new verb "placed."

Please contact me if you have any questions.

Best regards,

DOWNEY BRAND LLP



Scott L. Shapiro

SLS

cc: Emma Suarez, Member CVFPB (by email)  
Clyde McDonald, Member CVFPB (by email)  
Jay Punia, Executive Officer CVFPB (by email)  
Melinda Terry, General Manager CCVFCA (by email)  
Andrea Clark, Downey Brand (by email)



**CENTRAL VALLEY FLOOD PROTECTION BOARD**

3310 El Camino Ave., Rm. 151

SACRAMENTO, CA 95821

(916) 574-0609 FAX: (916) 574-0682

PERMITS: (916) 574-2380 FAX: (916) 574-0682



April 23, 2014

Scott Shapiro  
Downey Brand Attorneys LLP  
for: California Central Valley Flood Control Association  
621 Capitol Mall, 18<sup>th</sup> Floor  
Sacramento, CA 95814

Subject: Response to Comments  
Proposed Revisions of California Code of Regulations  
Title 23, Div 1 Central Valley Flood Protection Board  
Enforcement Actions and Evidentiary Hearings

Dear Mr. Shapiro:

Thank you for the comments you submitted on December 30, 2013 for the new regulations the Central Valley Flood Protection Board (Board) has drafted regarding enforcement actions and evidentiary hearings. The regulations committee has considered your comments and made most of the changes you proposed with a few exceptions. A detailed response to each of your comments is given below:

Section	Proposed Change	Response
13.2(c)(2)	The decision on the matter shall not become final until the board approves or rejects the hearing officer or committee's proposed <b>findings or</b> decision. The board's review of the hearing officer or committee's proposed <b>findings and</b> decision does not reopen the hearing and no new evidence shall be submitted unless allowed by the board president	Changes made, the text now refers to "findings and decision".
20 (b)	. . . . that it will comply with such law and <b>or</b> regulations, the board has . . . .	Change made, the text is now "such law or regulations".
21(b)(3)(iii)	. . . . that it will comply with such law and <b>or</b> regulations.	Change made, the text is now "such law or regulations".
22(c)	Once the board has taken action on a cease and desist order, any settlement of the underlying violation shall <b>require board approval and shall</b> be placed on the board's consent calendar pursuant to section 13.3 of these regulations, for approval by the board if allowed under Section 13.3.	Change made, the text is now "shall <b>require board approval and</b> be placed on the board's consent calendar".
24(a)	. . . .location of a public meeting	Change made, the text is now "a public

	before of the board at which time. . . .	meeting of the board”.
24(b)	If the person or public agency subject to the order fails to appear <b>at the noticed public meeting</b> , the board may approve issuance. . . .	Change made, the text is now “to appear <b>at the noticed public meeting</b> , the board may approve issuance”.
25(d)	. . . . In these situations, less notice may be provided, but in all cases the original notice <b>of an enforcement hearing</b> must be <b>provided</b> minimum of ten (10) calendar days prior to the hearing. . . .	Change made, the text is now “the original <b>notice of an enforcement hearing</b> must be <b>provided</b> a minimum of ten (10) calendar days prior to the hearing”.
25(h)	. . . . If the hearing is held by a committee of the board, the committee shall follow the hearing officer procedures in section 13.2. . . .	This sentence was changed to require both a hearing officer and a hearing committee to follow the hearing officer procedures in section 13.2. It states “Hearings held by a hearing officer or a committee of the board shall follow the hearing officer procedures in section 13.2.”
25(l)	At the conclusion of the hearing before the board <b>or upon consideration by the board under Section 13.2(c)(i) of a hearing officer or committee’s proposed findings and decision</b> , to comply with the requirement in section . . . .	This sentence was changed to state, “Where the board has acted as the hearing body, the board may do any of the following to comply with the requirement in section 13.1 (h) that the board adopt written findings of its decision;”
25(l)(i)	Immediately adopt all or part of the staff report or enforcement order <b>or proposed findings or decision</b> ; or	The rules for considering the proposed findings and decision of hearing officer or committee are described in section 13.2. The rules in section 25(l) apply to when the board has acted as the hearing body. This proposed change was not adopted to avoid duplication between the sections.
25(l)(iii)	<b>Where the board has acted as a hearing body</b> , Direct a board member, along with board legal counsel . . . .	For clarity, the beginning of section 25(l) was changed to state “Where the board has acted as a hearing body”.
26(a) and (b)	Do not make proposed edits to these subsection references here. This appears to be a carryover edit that is no longer necessary.	The subsections cited in this paragraph have been corrected.
29(a)(1)	identification of the board as the entity on whose behalf the lien is <b>to be imposed</b> .	The sentence was changed to state, “to be imposed”.
29(a)(3)	a legal description and assessor’s parcel number for the real property upon which the lien is to be <b>imposed</b> .	The sentence was changed to state, “to be imposed”.

The text changes we made based on your comments were incorporated into the emergency regulations that went into effect on January 2, 2014. These emergency regulations are in the process of becoming permanent regulations once they complete the public comment period on May 23, 2014. We hope we have addressed your comments and appreciate the time you took to make them. If you have any questions regarding our regulations please contact me directly at (916) 574-0684 or [curt.taras@water.ca.gov](mailto:curt.taras@water.ca.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "Curt Taras".

Curt Taras, PE  
Regulations Coordinator

Attachment

1. Proposed Regulations Text



From: Fredrickson Justin <JEF@CFBF.com>  
 To: 'Emma Suarez' <emmasuarezsq@yahoo.com>  
 Cc: Clyde MacDonald <clydewallace2@yahoo.com>; Jane Dolan <jdolan@sbcglobal.net>  
 Sent: Monday, December 2, 2013 11:43 AM  
 Subject: RE: Draft Regs Implementing SB 753

Emma and all: The proposed regulations are very technical and difficult to read, but I guess that is just normal for regulations. Unless I am missing something, I do not see anything horribly objectionable, and rather I have only these few comments:

1. Read side-by-side section 13(a) (Evidentiary Hearings) and section 13.3(a) (Consent Calendar) appear, at first glance, to contradict each other. (Compare, section 13(a), “an evidentiary hearing shall be held for any matter that requires the issuance of a permit,” and section 13.3(a), “[u]nless otherwise provided [...], the procedures set forth in Article 3 of these regulations pertaining to permit applications [...] shall apply to the consent calendar procedure.”) In reality, it seems that section 13.3(a) does not actually contradict section 13(a), but rather creates an exemption from it in establishing that there is an alternative abbreviated consent calendar procedure that is an exception to the stern command of section 13 that “an evidentiary hearing shall be held for any matter that requires issuance of a permit.” This may creates some confusion and lack of clarity—especially where 13(a) mentions another exception (delegation of permit issuance to the Executive Officer) as if it were the only exception. Again, confusing. Not fatal, just something for you to think about in some future iteration (or, perhaps, in connection with your permanent regs).
2. I like and appreciate the “Settlement of Violations” provisions included in section 22. You may recall this was a big bone of contention with Nicole and something Melinda and I had argued in favor of back when were debating the content of legislation, so it is nice to see it show here in the regs. I think it adds fairness for the landowner and, at the same time, balances the board’s concerns about delay, etc., in the way it is drafted. Thank you for this.
3. I do not understand why section 24(c) (“Board Approval of Cease and Desist Orders”) says that “[t]he board’s consideration of issuance of a cease and desist order is not an evidentiary hearing and the provisions of these regulations that apply to evidentiary hearings, sections 13 and 13.1 do not apply[....],” where, in contrast, section 25 (concerning “Enforcement Order Hearing Procedures”) says “[e]nforcement [o]rder hearings shall be conducted pursuant to the evidentiary hearing procedures described in subsections (c)-(f) and (i) of section 13, section 13.1 and 13.2 of these regulations with [certain] changes.” I imagine someone’s thought may have been that evidentiary proceedings on the C&D would add unnecessary delay and redundant process where an evidentiary hearing is eventually reached at the enforcement order level. What this risks, however, is that the “good” landowner at the C&D level could be deprived of process, with that fuller process instead reserved for the “bad” landowner at the enforcement order stage. I don’t know that stripping the C&D step of evidentiary status necessarily saves lots of time, although it may be consistent with the more abbreviated nature of the step when compared to the enforcement

order. In contrast, the enforcement step has greater finality and legally binding effect, so perhaps it is appropriate. I'm not sure it makes a huge difference, but I did notice the disparity and so raise it here for your consideration.

4. I do not understand why the "written conclusions required by section 13.1(h)" are dropped under subsection (h) of section 25 for "Enforcement Order Hearing Procedures." This is where (h) creates an exemption from "a discussion of the elements identified in Water Code section 8610.5(c)(1)-(4)." In contrast, the "written conclusions under subsection (h) of section 13.1 ("Conduct and Order of Evidentiary Hearing Procedures") requires "written conclusions setting forth the factual and legal basis of the decision based upon the record" for "[a]ll decisions of the board relating to permit applications." If it is required in one instance, I do not understand why it is not required for the other—although I can see how some of the very sweeping considerations required by section 8610.5(c)(1)-(4) certainly could make for a more cumbersome process, perhaps to no good end. Again, I'm not sure what the answer is here, so I merely note the discrepancy for your consideration.

5. Somewhat awkwardly, the Water Code 8702 findings referenced in section 28(a)(8) are very similar, and possibly duplicative of, or at least overlapping with the separate "reasons" identified in section 28(a)(5) and 28(a)(6).

That's all I've got. Sorry for the delay in reviewing, but thank you for the attempt at reaching out.

Justin Fredrickson  
Environmental Policy Analyst  
Legal Services Division  
California Farm Bureau Federation  
2300 River Plaza Drive  
Sacramento, CA 95823  
Direct: 916-561-5673  
Fax: 916-561-5691  
E-mail: jfredrickson@cbbf.com

**CENTRAL VALLEY FLOOD PROTECTION BOARD**

3310 El Camino Ave., Rm. 151

SACRAMENTO, CA 95821

(916) 574-0609 FAX: (916) 574-0682

PERMITS: (916) 574-2380 FAX: (916) 574-0682



April 24, 2014

Justin Fredrickson  
California Farm Bureau Federation  
2300 River Plaza Drive  
Sacramento, CA 95823

Subject: Response to Comments  
Proposed Revisions of California Code of Regulations  
Title 23, Div 1 Central Valley Flood Protection Board  
Enforcement Actions and Evidentiary Hearings

Dear Mr. Fredrickson:

Thank you for the comments you submitted on December 2, 2013 for the new regulations the Central Valley Flood Protection Board (Board) has drafted regarding enforcement actions and evidentiary hearings. The regulations committee has considered your comments and provides a detailed response to each of your comments below:

**Comment # 1**

*Read side-by-side section 13(a) (Evidentiary Hearings) and section 13.3(a) (Consent Calendar) appear, at first glance, to contradict each other. (Compare, section 13(a), "an evidentiary hearing shall be held for any matter that requires the issuance of a permit," and section 13.3(a), "[u]nless otherwise provided [...], the procedures set forth in Article 3 of these regulations pertaining to permit applications [...] shall apply to the consent calendar procedure.") In reality, it seems that section 13.3(a) does not actually contradict section 13(a), but rather creates an exemption from it in establishing that there is an alternative abbreviated consent calendar procedure that is an exception to the stern command of section 13 that "an evidentiary hearing shall be held for any matter that requires issuance of a permit." This may create some confusion and lack of clarity—especially where 13(a) mentions another exception (delegation of permit issuance to the Executive Officer) as if it were the only exception. Again, confusing. Not fatal, just something for you to think about in some future iteration (or, perhaps, in connection with your permanent regs).*

**Response # 1**

There are three ways the issuance of a permit may be considered: 1. By evidentiary hearing, 2. By placement on the board's consent calendar, or 3. By delegation to the Executive Officer. The complexity of the permit application dictates at which level it will be considered. Contested permits require an evidentiary hearing. Complex but uncontested permits can be placed on the consent calendar. Simple and uncontested permits may be delegated to the Executive Officer. These rules are set in statute and the regulations expand on them. The regulations are written in the same way the statutes were written as exceptions to the requirement for an evidentiary hearing. This was done to keep clarity between the statutes and the regulations.



Comment # 2.

*I like and appreciate the "Settlement of Violations" provisions included in section 22. You may recall this was a big bone of contention with Nicole and something Melinda and I had argued in favor of back when we were debating the content of legislation, so it is nice to see it show here in the regs. I think it adds fairness for the landowner and, at the same time, balances the board's concerns about delay, etc., in the way it is drafted. Thank you for this.*

Response # 2

Thank you for noting that your concern regarding "Settlement of Violations" was addressed in the text

Comment # 3.

*I do not understand why section 24(c) ("Board Approval of Cease and Desist Orders") says that "[t]he board's consideration of issuance of a cease and desist order is not an evidentiary hearing and the provisions of these regulations that apply to evidentiary hearings, sections 13 and 13.1 do not apply[...]," where, in contrast, section 25 (concerning "Enforcement Order Hearing Procedures") says "[e]nforcement [o]rder hearings shall be conducted pursuant to the evidentiary hearing procedures described in subsections (c)-(f) and (i) of section 13, section 13.1 and 13.2 of these regulations with [certain] changes." I imagine someone's thought may have been that evidentiary proceedings on the C&D would add unnecessary delay and redundant process where an evidentiary hearing is eventually reached at the enforcement order level. What this risks, however, is that the "good" landowner at the C&D level could be deprived of process, with that fuller process instead reserved for the "bad" landowner at the enforcement order stage. I don't know that stripping the C&D step of evidentiary status necessarily saves lots of time, although it may be consistent with the more abbreviated nature of the step when compared to the enforcement order. In contrast, the enforcement step has greater finality and legally binding effect, so perhaps it is appropriate. I'm not sure it makes a huge difference, but I did notice the disparity and so raise it here for your consideration.*

Response # 3

The meeting to contest a cease and desist order is an opportunity for a respondent to address the board and resolve a violation. It is not an evidentiary hearing so it can be addressed less formally and be placed on the consent calendar. The approval of a cease and desist order can be elevated to an evidentiary hearing by a board member deciding to pull the item from the consent calendar.

Comment # 4.

*I do not understand why the "written conclusions required by section 13.1(h)" are dropped under subsection (h) of section 25 for "Enforcement Order Hearing Procedures." This is where (h) creates an exemption from "a discussion of the elements identified in Water Code section 8610.5(c)(1)-(4)." In contrast, the "written conclusions under subsection (h) of section 13.1 ("Conduct and Order of Evidentiary Hearing Procedures") requires "written conclusions setting forth the factual and legal basis of the decision based upon the record" for "all decisions of the board relating to permit applications." If it is required in one instance, I do not understand why it is not required for the other—although I can see how*

*some of the very sweeping considerations required by section 8610.5(c)(1)-(4) certainly could make for a more cumbersome process, perhaps to no good end. Again, I'm not sure what the answer is here, so I merely note the discrepancy for your consideration.*

Response #4

The considerations required by section 8610.5(c)(1)-(4) relate to permitting hearings and not to enforcement hearings. Permits require consideration of the best available science, the effects on the entire State Plan of Flood Control, and the effects of reasonably expected future events including but not limited to changes in hydrology, climate, and development within the applicable watershed. Enforcement hearings do not propose projects so they do not require these considerations. Instead, enforcement hearings require findings of fact that a statute or regulation has been violated or that the subject of the enforcement is detrimental to a feature of the State Plan of Flood Control.

Comment # 5.

*Somewhat awkwardly, the Water Code 8702 findings referenced in section 28(a)(8) are very similar, and possibly duplicative of, or at least overlapping with the separate "reasons" identified in section 28(a)(5) and 28(a)(6).*

Response #5

Water Code 8702 lists the findings the Board must make to order the removal of a previously permitted encroachment. Regulations Section 28 lists the reasons a permit may be revoked or modified. The actions taken by the Board are different while the findings and reasons to do both actions are very similar. The Board may also hold a single hearing to consider permit revocation and order the removal of a previously permitted encroachment.

We have made some text changes based on your comments and others we received. This final text was incorporated into the emergency regulations that went into effect on January 2, 2014. These emergency regulations are in the process of becoming permanent regulations once they complete the public comment period on May 23, 2014. We hope we have addressed your comments and appreciate the time you took to make them. If you have any questions regarding our regulations please contact me directly at (916) 574-0684 or [curt.taras@water.ca.gov](mailto:curt.taras@water.ca.gov).

Sincerely,



Curt Taras, PE  
Regulations Coordinator

Attachment:

1. Proposed Regulations Text