

**Meeting of the Central Valley Flood Protection Board
March 28, 2014**

Staff Report – Expanded Enforcement Authority and Enforcement Pilot Program

1.0 – ITEM

In 2013, the governor signed SB 753 into law. This legislation made several changes to the Water Code affecting the Central Valley Flood Protection Board (Board). For instance, the Board now has the authority to impose administrative penalties, hold enforcement hearings and issue enforcement orders, and hold a lien hearing to recover abatement costs by filing liens against property. Water Code Section 8701(b) allows the Department of Water Resources (DWR) or a local maintaining agency (LMA) to initiate the enforcement process if the Board delegates that authority to the LMA. Water Code Section 8709 required the Board to adopt emergency regulations implementing the Water Code changes. The regulations were put into place in January 2014, and staff is currently working on permanent regulations to go into effect on the expiration of the emergency regulations in July.

2.0 – NEW ENFORCEMENT PROCESS AND ENCROACHMENT PRIORITIZATION

Board staff has used the updated California Water Code and Emergency Regulations to develop the new enforcement process. Staff has also developed new enforcement templates that will be used internally as well as by LMAs that issue Notices of Violation (NOV) pursuant to the delegated authority from the Board.

The Enforcement Database has been updated and now assigns an importance ranking to all encroachments entered into the database. This will allow staff to focus resources using a “worst first” approach.

3.0 – PILOT PROGRAM

California Code of Regulations Title 23, Section 23 Delegation of Enforcement Authority states that “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.”

To begin implementing this new authority, Board Staff has initiated a Pilot Program with the American River – City of Sacramento – Maintenance Area 9 (DWR) LMAs. This levee system consists of both urban and non-urban areas, as well as a mix of State, city and local LMAs. The Pilot Program, which is planned to run from February through September 2014, will allow staff to work through and streamline the combined LMA-Board Enforcement Process on a manageable scale. Pilot Program LMAs will retain the delegated authority when staff concludes the Pilot Program and begins to offer the delegated authority to the other LMAs within the Board's jurisdiction.

4.0 – ENFORCEMENT CHALLENGES

The first and foremost challenge to Board's enforcement authority is the outdated Sacramento San Joaquin Drainage District (SSJDD) Land Rights information which is currently in deed format only. Because there are no readily obtainable and accurately geo-referenced SSJDD levee and floodway easement maps, Board and LMA staff both face subsequent challenges in addressing encroachments that may or may not be within State or local flood system right of way areas. Encroachment permit issues such as indeterminate permit life, lack of a compliance inspection program for permitted facilities, along with some permits not being tied to the land are additional challenges to enforcement work that needs to be addressed.

5.0 – MOVING FORWARD

The overall success of the recently updated enforcement program will rely on the continued alliance between the Board and its partners, as well as the investment the Board makes in modernizing our data infrastructure. Strengthening Board partnerships among agencies at the state, city, county, and local levels can help the Board in meeting its obligations to remove noncompliant encroachments within the flood control system, reduce flood risk, and develop long term strategies that will address today and tomorrow's challenges.

The key strategy is an investment in modernizing the Board's data infrastructure. There is a current need to digitize an inventory of historical data, including permit records, engineering documents, and SSJDD Land Rights information and make these accessible to Board partners. A digitized, geo-referenced, and accessible dataset will aid in organizing, disseminating, and sharing the information needed to address many technical challenges.

6.0 – CONCLUSIONS

Staff has worked hard to successfully implement the new authorities that are now provided while continuing to enforce unpermitted and non-compliant encroachments. Several LMAs have been engaged by staff in a pilot program to work through the new enforcement process and delegated authority process which will help staff further define the new enforcement process. Enforcement challenges have been identified and staff has been coordinating with appropriate agencies to develop methods to address these challenges.

Using the new delegated authority and working with our LMA partners to address the unpermitted and non-compliant encroachments throughout the flood control system will improve staff's ability and efficiency to address violations, reduce flood risk, and regain or retain LMA eligibility in the USACE's Public Law 84-99 Rehabilitation and Inspection Program.

CENTRAL VALLEY
FLOOD PROTECTION BOARD

A GUIDE THROUGH THE

ENCROACHMENT
ENFORCEMENT
PROCESS



- The State-federal flood control system includes nearly 1600 miles of levees that protect the Central Valley from devastating floods. These levees have been “authorized” by the State and federal governments and are known as “project levees.”
- The CVFPB has the responsibility of regulating encroachments that may affect the federal flood control system built by the U.S. Army Corps of Engineers and is maintained by local maintaining agencies.
- The CVFPB has adopted about 1300 miles of “designated floodways” to control the type of construction allowed in these flood-prone areas.
- During the 1997 floods, the federal flood control system prevented billions of dollars in damages to the Sacramento and San Joaquin valleys. However, there were several levee failures which re-emphasized the ongoing need to protect and improve the existing levees and flood control projects in the Central Valley.
- A 100-year flood has a 1% chance of occurring in any given year. This is roughly equivalent to a 26% chance that a 100-year flood will occur during a typical homeowner’s 30-year mortgage.



Central Valley Flood Protection Board
Phone: (916) 574-0609
Fax: (916) 574-0682
cvfbquestions@water.ca.gov
3310 El Camino Avenue, Room 151
Sacramento, California 95821
<http://www.cvfpb.ca.gov>
For emergencies call (916) 574-2619

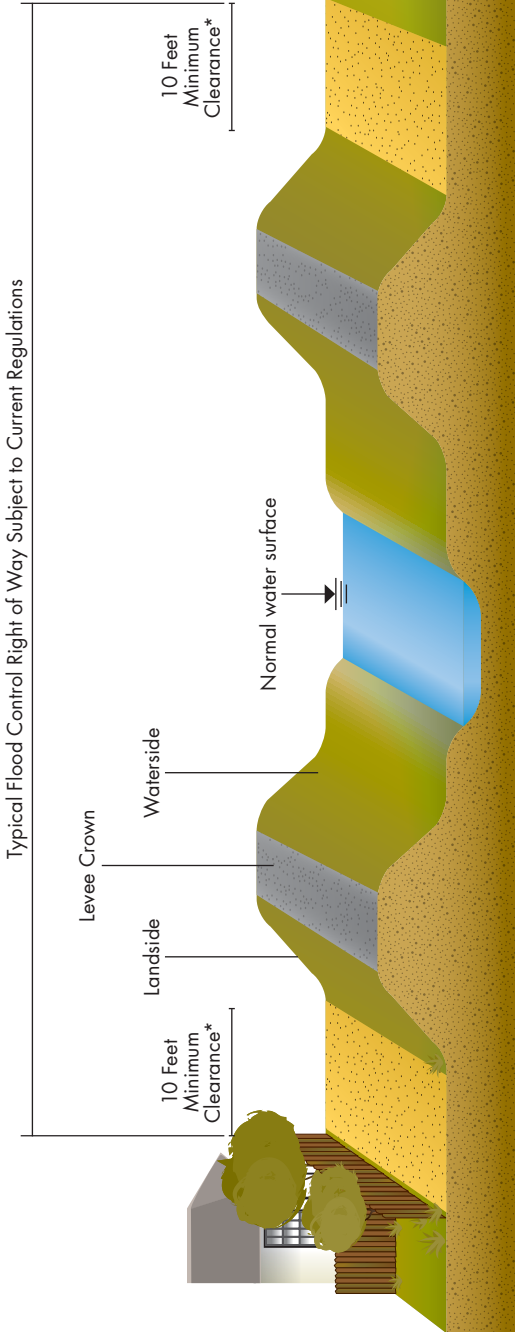
- What should you do if you are contacted about a noncompliant encroachment or work on your property?**
- Contact your Local Maintaining Agency (LMA) for guidance on steps to take to prevent further encroachment enforcement actions.
 - Get informed about living near a levee: **<http://www.cvfpb.ca.gov>** has links to the California Water Code and our Regulations. CVFPB’s user-friendly **“Need for an Encroachment Permit”** pamphlet describes the CVFPB permitting process.
 - Work with CVFPB enforcement staff to resolve the encroachment issue(s) as efficiently as possible.
- Read on for an overview of the CVFPB Encroachment Enforcement Process.**

As a landowner living near a State-federal flood control project levee in the Sacramento or San Joaquin Central Valley or Delta, you probably have questions about the Central Valley Flood Protection Board’s (CVFPB) encroachment enforcement process. In this pamphlet **you’ll find answers** to many of your questions along with some information on how to prevent an encroachment enforcement action.

CVFPB Mission:
To reduce the risk of catastrophic flooding to people and property within the California Central Valley.

CVFPB Area of Jurisdiction:
As stated in the California Code of Regulations, Title 23, Article 1, Section 2(b), “the area of the Board’s jurisdiction includes the entire Central Valley, including all tributaries and distributaries of the Sacramento and San Joaquin Rivers, and the Tulare and Buena Vista Basins.

Levee/Flood Channel cross-section showing the minimum 10-foot clearance

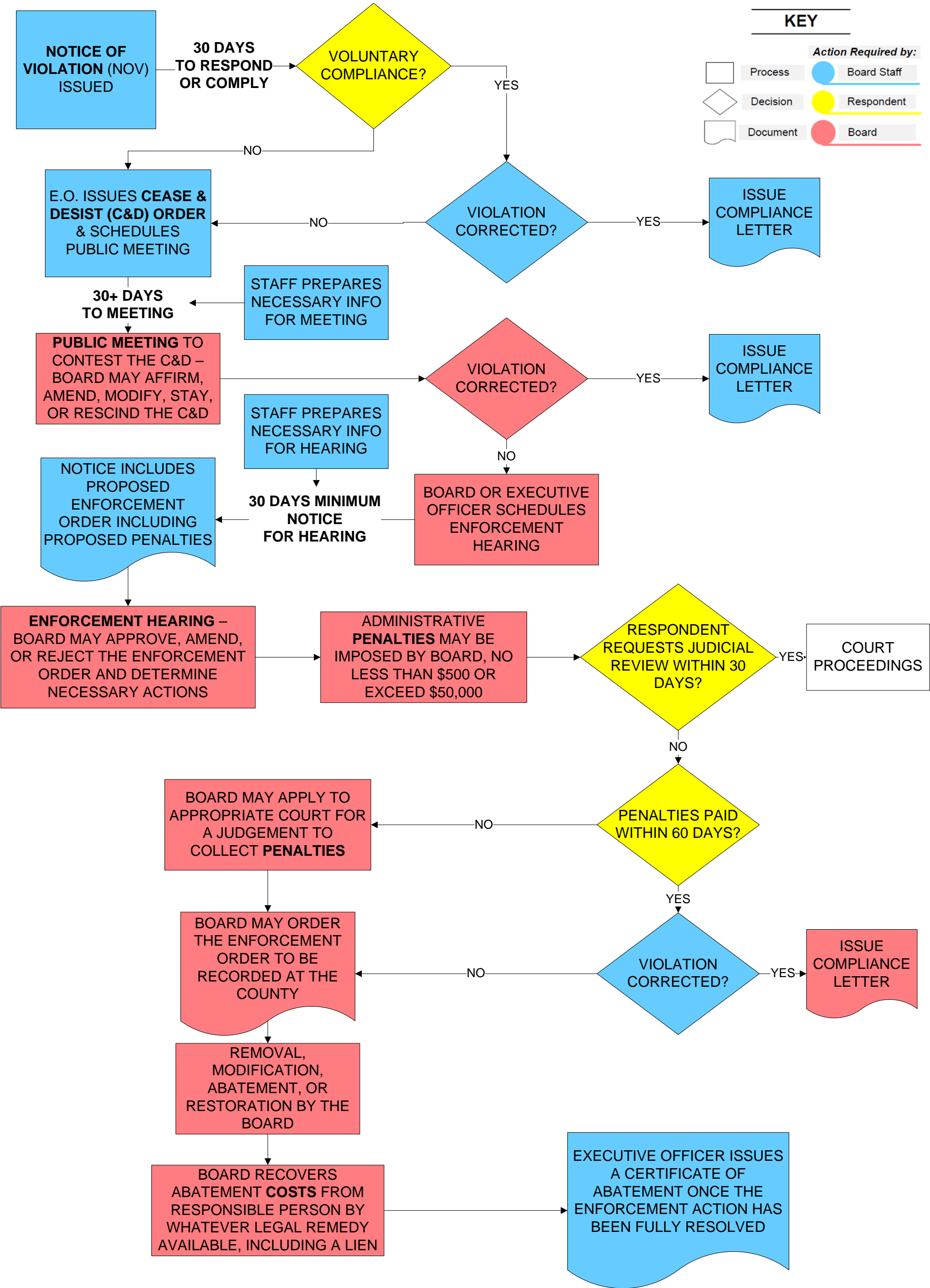


*Future regulations may increase the minimum 10-foot clearance requirement. Please review the CVFPB website for the latest standards.

NOTICE OF VIOLATION (NOV)	CEASE & DESIST ORDER AND PUBLIC MEETING	ENFORCEMENT HEARING	ADDITIONAL ENFORCEMENT ACTIONS
<ul style="list-style-type: none"> • Begins the official enforcement process. • Cites the relevant statutes and/or regulations that your noncompliant encroachment(s) or unpermitted work have violated. • Requires a response, with a plan and schedule for the removal or repair of the encroachments or work. • Guides you on what actions to take to address code violations, and whether those actions require a permit from the CVFPB. • Informs you of the consequences that can result from noncompliance. 	<ul style="list-style-type: none"> • If the NOV is not cleared CVFPB's Executive Officer will issue a Cease & Desist Order (C&D Order). • All C&D Orders are placed on a CVFPB meeting agenda to be considered by the Board. • Except in case of emergency the public meeting will be scheduled at least 30 days after the C&D Order is issued. • You will be notified in advance of the meeting date and you or your representative may attend the meeting to contest the C&D Order in person. • Based on the information available the Board may affirm, amend, modify, stay, or rescind the C&D Order. 	<ul style="list-style-type: none"> • Except in case of emergency CVFPB staff will notify you at least 30 days prior to the Enforcement Hearing date. • The notice will include the proposed Enforcement Order, and may include administrative penalties, which depending on the severity of the violation, range from \$500 to \$50,000. • The CVFPB staff will present the enforcement case to the Board, and then you will have an opportunity to present your case. • The Board may approve, amend, or reject the Enforcement Order and determine necessary actions. 	<ul style="list-style-type: none"> • The CVFPB may file the Enforcement Order with the court to collect the imposed penalties. • The CVFPB may record the Enforcement Order against your property. • The CVFPB may order removal, modification, abatement, or restoration. • The CVFPB may recover abatement costs from the responsible party by any legal remedy available, including placing a lien on your property. • Once the Enforcement Action has been fully resolved, and all fines paid in full, the CVFPB Executive Officer will issue a Certificate of Abatement, which may be recorded to clear the Enforcement Order.
<p>If there is no response, or if no action is taken towards correcting the violations, you will receive a Cease and Desist (C&D) Order as required by California State Law.</p>	<p>You are highly encouraged to make contact with enforcement staff prior to the public meeting to discuss your options. If the Board does not stay or rescind the C&D Order, and no action is taken towards correcting the violations, an enforcement hearing will be scheduled.</p>	<p>Any actions approved and fines levied in the Enforcement Order are immediately enforceable.</p>	<p>At any point prior to the issuance of an Enforcement Order you have the opportunity to stop the enforcement action by working with CVFPB staff to comply with the NOV or C&D.</p>
			
<p>Noncompliant staircase on levee slope. Noncompliant steps are not flush with levee slope.</p>	<p>Noncompliant swimming pool excavation causing soil displacement near levee foundation; fence & gazebo obstructing patrol and maintenance corridor.</p>	<p>Damaged pipe eroding levee slope.</p>	<p>Landslide levee toe patrol corridor obstructions. Landslide levee toe encroachments obstructing maintenance and patrol corridor.</p>

CENTRAL VALLEY FLOOD PROTECTION BOARD (CVFPB) ENFORCEMENT PROCESS

Note: This flowchart provides an overview of the primary enforcement process outlined in California Water Code Sections 8579, 8700 - 8709, and 8732, as amended by Senate Bill 753. The CVFPB is also authorized to take emergency enforcement action, abate maintenance impairments, and revoke permits. The CVFPB can also initiate civil action at any time.



NO LATER THAN (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.

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



March 20, 2014

LMA Partner Name

LMA

Address

City, California Zipcode

Subject: **Delegation of Enforcement Authority to Issue Notices of Violation – Pilot Program**

Dear Mr. LMA Partner:

The State of California has recently enacted legislation to improve the enforcement of regulations protecting levees, floodways, and flood control features. Water Code Section 8701(b) allows the Department of Water Resources (DWR) or a local maintaining agency (LMA) to initiate the enforcement process if the Central Valley Flood Protection Board (Board) delegates DWR or the LMA that authority.

The Board is initiating a Pilot Program using the American River – City of Sacramento – Maintenance Area 9 (DWR) levee system. This system consists of both urban and non-urban areas, as well as State, City and Local maintaining agencies. It is anticipated that the Pilot Program will begin in late February. During the Pilot Program we hope to streamline the combined LMA / Board Enforcement Process. At the successful conclusion of the Pilot Program, the authority to issue Notices of Violation (NOV) will be offered to other LMA's within the CVFPB's jurisdiction. The Pilot Program participants will retain the authority to issue NOVs after the conclusion of the Pilot Program.

The Board invites LMA Partner to become a partner in this Pilot Program by offering the LMA Partner the authority to issue NOVs on behalf of the Board. NOVs are the first official enforcement notice of a violation of a flood protection regulation or statute and the first step in the enforcement process. Board staff has developed a standard NOV form (Attachment 1), and use of this form will be mandatory for all agencies participating in the Board's enforcement program. The Board's enforcement program is designed to achieve voluntary correction of the violation at the earliest possible date.

LMA Partner's participation in the Pilot Program is voluntary; however, we are encouraging a small number of maintaining agencies to help us initiate and test the program. LMA Partner has been identified as a suitable partner for this important trial period and we would appreciate your input. The benefits to LMA Partner include having authority to cite infractions such as unauthorized encroachments, unmaintained pipes, and unauthorized vegetation on our levees, which will assist LMA Partner to maintain flood control standards as well as increase your agency's eligibility for State and federal levee improvement funding programs.

To assist you in this process, Board staff has prepared two enforcement flowcharts (Attachment 2) which diagram the new enforcement process. The Pilot Program participants will be responsible for issuing the NOVs, working with the respondents to correct the violations,

Enforcement Delegation

forwarding a copy of each NOV issued to the Board within five days of issuance, and keeping Board enforcement staff informed of the status of the remediation efforts. If satisfactory progress cannot be made at the local level, the agency will then turn the action over to Board staff for further processing. Pilot Program participants will be asked to provide investigation details and partner with Board staff to bring the matter to a satisfactory conclusion.

The Board staff will be conducting an informational briefing at the Flood Control Association's Annual Meeting on March 19, 2014. Board staff also will be presenting a more in-depth briefing and status update to the Board at the March 28, 2014 Board meeting. Individual agency or small group training sessions can also be arranged directly with Board staff, and we are happy to answer any questions or provide enforcement assistance to our local partners.

In addition to the NOV template discussed above, we have also attached a draft Delegation Agreement (Attachment 3). Signing the Agreement is a requirement to participating in the program, so we are seeking comments from interested parties on this agreement and the draft NOV before they are finalized. For your reference, I have included the applicable California Water Code and California Code of Regulations citations (Attachment 4). You may provide comments directed to Mr. Michael C. Wright by email: Michael.Wright@water.ca.gov or by phone: (916) 574-0698. Please provide your comments **no later than March 7, 2014**.

Thank you for being a partner with the Central Valley Flood Protection Board in providing a safe and operable flood protection system for our citizens. If you have any questions about the program or would like additional information, please contact Mr. Wright. Board staff looks forward to working with you.

Sincerely,

Jay S. Punia, PE
Executive Officer

Attachments:

1. NOV template
2. Enforcement Flowcharts
3. Enforcement Delegation Agreement
4. California Water Code Section 8701 (b)
California Code of Regulations Section 23

cc: Mark List
Eric McGrath
DWR DFM FMO

Len Marino
Leslie Gallagher
Michael C. Wright
Alison Tang
Mikee Green
CVFPB

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3310 El Camino Ave., Rm. 151
 SACRAMENTO, CA 95821
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**Local Maintaining Agency Notice of Violation (NOV) Checklist**

Thank you for participating in the Central Valley Flood Protection Board's (CVFPB) enforcement process. Prior to issuing an NOV, please make sure you:

- ☐ Check for CVFPB permits and / or Automatic Board Orders to verify that the encroachment is permitted and in compliance with the permit:
 - On <http://arccgis02.geiconsultants.com/permitGIS/login.jsp>
 - In Local Maintaining Agency (LMA) permit records
 - With CVFPB enforcement staff
- ☐ Check county, city, and LMA records for other permits
- ☐ Review the history of the encroachment at www.cdec4gov.water.ca.gov/public_systems_docs.html and check the following:
 - U.S. Army Corps of Engineers (USACE) As-Builts
 - USACE Operations & Maintenance (O&M) Manuals
 - Department of Water Resources Levee Logs
- ☐ Perform an initial site visit; document with photographs and a brief written report
- ☐ Look up the contact information of the landowner tied to the Assessor's Parcel Number (APN) where the violation is located
- ☐ Identify the responsible party who is believed to be responsible for the encroachment violation
- ☐ Check for Sacramento-San Joaquin Drainage District (SSJDD) easements
- ☐ Informally contact the landowner about the violation as a courtesy notification
- ☐ Document all work related to your investigation

All of this information is necessary for a successful enforcement case. If you have questions or need assistance with the items listed above please contact Ms. Alison Tang, P.E., Acting Chief of Enforcement Section by phone at 916-574-0682, or by e-mail at Alison.Tang@water.ca.gov.

CENTRAL VALLEY FLOOD PROTECTION BOARD (CVFPB) LOCAL MAINTAINING AGENCY ENFORCEMENT PROCESS

UPDATED 2-6-2014

Note: This flowchart provides an overview of the enforcement process that can be delegated to Local Maintaining Agencies as outlined in California Water Code Sections 8701 and California Code of Regulations Title 23, Section 23.

