

Title 23 Regulations Proposed Updates

Stakeholder Review Team

Kickoff Meeting

October 8, 2015

Introductions

- Central Valley Flood Protection Board Members
- Board staff
- Federal Agencies – USACE, USFWS
- State Agencies – DWR, CALTRANS, DSC, DFW
- Local Agencies – Counties, Cities, Maintaining Agencies, JPAs
- NGOs
- Utilities – PG&E
- Private Consultants

Stakeholders

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- Local Agencies – Counties, Cities, Maintaining Agencies, JPAs
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Objectives

- To update the Board Standards governing the design and construction of Proposed Work within the Board's Jurisdiction to be consistent with:
 - U.S. Army Corps of Engineers standards and permitting requirements
 - Modern construction methods
- To bring Title 23 into conformance with, and to further clarify, current Board procedures and practices (consistent with federal and State public safety, flood risk management, and environmental stewardship objectives)

Future Considerations not Included

- Increase waterside levee encroachment setback from 10 to 15 feet waterward of the waterside toe
- Increase landside levee encroachment setback from 10 to 20 feet landward of the landside toe
- Modify Board jurisdiction over Regulated Streams
- Change boundaries of Designated Floodways
- Consider need to incorporate Urban Levee Design Criteria / Urban Level of Protection requirements
- Consider need to align with 2017 Central Valley Flood Protection Plan
- Consider changes to align with future levee vegetation management criteria

Key Milestones

- First Stakeholder briefing (Oct. 8)
- Stakeholder comments due (Nov. 6)
- Comment processing / update / legal review (Jan 8)
- CEQA IS/ND Agency & Public Review (Jan 20)
- Second Stakeholder briefing (Feb. 12)
- Complete Admin Draft (Mar. 17)
- Board Adoption Admin Draft / CEQA ND (Mar. 25)
- File CEQA Notice of Determination (Mar 28)
- Route OAL Rulemaking Package (Apr. 22)
- OAL Approval (Jul 8)

Minor Editorial Changes

- Table of Contents
- Article 1, Authority, Purpose, Scope, and Intent
 - Section 3
- Article 2.5, ExParte Communications
 - Section 5.1
- Article 3, Application Procedures
 - Sections 10, 12, 13, 13.1, 13.2, 13.3, 17, and 19
- Article 4, Enforcement
 - Sections 20, 21, 22, 23, 24, 25, 26, 27, and 29
- Article 4.1, Reconsideration
 - Section 30
- Article 5, Designated Floodways
 - Sections 101, 102, 103, 104, 105, 106
- Article 7, Review Rights
 - Sections 109, and 110
- Article 8, Standards
 - Sections 111, 118, 119, 134, 135, 136 and 138
- Article 9, Regulations for Implementation of CEQA
 - Section 190, 193
- Article 10, Appendices
 - Proposal to remove all of Article 10 and place it on the Board's website
- Updating Tables, Figures and Graphs throughout the document

A2, Definitions and Delegations

S4, Definitions

- Definitions capitalized per current Office of Administrative Law requirements
- Definitions only added when use of word(s) differs from the standard dictionary definition
- Dictionary.com, based on the Random House Unabridged Dictionary, was consulted
- The plural is also assumed for all singular nouns
- Style: addressed recurring issue of lack of clarity and consistency for “jurisdiction” and “adopted plan of flood control”
- Style: addressed inconsistent use of “encroachment”, “project”, “work”, “use”

A2, Definitions and Delegations

S4, Definitions

- “Board Jurisdiction” (page 4 of 146)
- “Adopted Plan of Flood Control” (page 4)
 - Examples not listed in Title 23 include:
 - Designated Floodway program adopted in 1968
 - Butte Basin Plan of Flood Control adopted in 1988
 - Title 23 (including Regulated Streams in Section 112, Table 8.1) adopted in 1996
 - Central Valley Flood Protection Plan, adopted in 2012
- “State Plan of Flood Control” (page 9)
- “SPFC Facilities” (page 9) – also replaces “Project Works”
- “SPFC Levees” (page 9, formerly “Project Levees”)
- “Non-SPFC Flood Control Facilities” (page 7), formerly “Nonproject Works”

A2, Definitions and Delegations

S4, Definitions

Definitions related to Permits (all on page 8 of 146)

- “Permit”
- “Proposed Work”, covers everything needing a Board permit. This replaces a myriad of inconsistently used terms including “works”, “proposed work”, “project(s)”, and “use(s)”.
- “Permitted Work”
- “Permittee”

A2, Definitions and Delegations

S4, Definitions

Definitions Related to Encroachments

- “Encroachment” (page 5 of 146), now includes “in, on, over, under, through, or adjacent to” language with USACE 33 Section 408
- “Conforming Existing Encroachment” (page 5), an encroachment, facility or use adopted into the SPFC (USACE project)
- “Legacy Encroachment” (page 6) identified in a USACE O&M Manual or USACE as-built drawings
- “Lawful Existing Encroachment” (page 6) - deleted
- “Nonconforming Existing Encroachment” (page 7), existing but inconsistent with Title 23
- “Previously Permitted Encroachment” (page 8) as defined in WC 8702 is backed by a “Permit” or other Board written instrument (including prior Automatic Board Orders)

A2, Definitions and Delegations

S4, Definitions

Definitions Related to Levees

- “Levee Right of Way” (page 6 of 146)
- “Levee Section” (page 7)
- “Levee Toe” (page 7)
- “Projected Levee Section” (page 8)
- “Seepage Berm” (page 9)
- “Stability Berm” (page 9)
- “SPFC Levees” (page 9)
- “Waterside Berm”

A2, Definitions and Delegations

S4, Definitions

Other important new definitions:

- “Flood Season”(page 6 of 146)
- “Minor Streams” (page 7)
- “Regulated Streams” (page 8)
- “Stream” (page 9)
- “Time Variance Request” (page 9)
- “Urban Area” (page 10)
- “Urbanizing Area” (page 10)

A1, Authority, Purpose, Scope and Intent

S2, Purpose and Scope

- Clarify geographic extent of Board jurisdiction
- Clarify that federal and State agencies are regulated, but that the federal Central Valley Project (WC 8536) and State Water Project (WC 12931, 12934(d)) are not
- Clarify compliance with Board obligations to USACE pursuant to Section 208.10 and 33 USC 408.

A2, Definitions and Delegations

S5, Delegations

- Some changes made to delegations to Executive Officer for permitting 5(b) and notices of violation 5(g)

A3, Application Procedures

- S6, Need for a Permit
 - (6e) Waiver of permit by Executive Officer for minor activities not injurious to the Board's Jurisdiction
- S7, Endorsement by LMA
 - Board staff evaluation and incorporation of intent of conditions into the Board Permit
 - LMAs may require their own permits

A3, Application Procedures

S8, Applications

- More details regarding application requirements
- Instructions added to complete the environmental assessment
- More detail is needed if we are to remove the Sample Permit, Application Form, and Environmental Assessment from the regulations (will be available from website)
- Minor changes to the forms can then be made without having to update the regulations

A3, Application Procedures

S9, Acknowledgement, Completeness, Adjacent Landowners

- Application will be closed for failure of the applicant to provide additional information within 6 months
- A new application is required to reopen
- Consider adding a statement that USACE transmittal and review starts only after the application is deemed complete (no USACE review of incomplete applications)

A3, Application Procedures

S11, Variances

- Variances apply only to the Board's Standards (Article 8) and not to the entire regulations
- Require written supporting documentation from the applicant to demonstrate no potential injurious impacts and public safety
- Executive Officer may not waive Board Standards

A3, Application Procedures

S14, Board Decision

- Board may not act without a USACE 408 decision for Proposed Work within the USACE project interest
- Time for Board action on application is changed
 - From 6 to 12 months for applications where Board is lead agency pursuant to CEQA EIR
 - From 3 to 6 months for applications where Board is lead agency pursuant to CEQA ND or MND
 - From 180 days to 1 year for applications where Board is a responsible agency

A3, Application Procedures

S15, Bases for Denial of Permit Applications

- Added reasons for denying permit, such as
 - Threat to public safety
 - USACE recommendation to deny permit pursuant to Section 408
 - If Board is investigating violations or taking enforcement action against the applicant

A3, Application Procedures

S16, Permit Conditions

- Require Permittee to repair or restore damage to flood control facilities resulting from construction, operation, and maintenance of Permitted Work
- Require Permittee to provide access for inspection, flood fighting, and O&M of flood control facilities
- Require Permittee to provide periodic inspection reports

A3, Application Procedures

S18, Revisions in Plans

- Substantive changes in plans after Permit approval must be approved by the Board
- Proposed minor or insubstantial changes to approved project plans must be submitted in writing to the Chief Engineer and may be approved by the Chief Engineer

A4, Enforcement Actions

S28, Permit Revocation

- The Executive Officer may revoke Permitted Work when the work no longer exists or construction has not commenced within two (2) years of Permit issuance

A5, Designated Floodways

S100, Authority (new)

- New section proposed to specify Board's authority under Water Code 8609 to designate and adopt Designated Floodways
- Primary purpose is to restrict development in areas required for passage of a 100-year or other designated flood flow on Streams under Board Jurisdiction

A5, Designated Floodways

S107, Permitted Work in Designated Floodways

- Requires finished floor elevation 2 feet above Design Water Surface Elevation, or 2 feet above 100-year WSE, whichever is higher, on new structures for human habitation, and if there is a suitable evacuation route

A6, Legacy Encroachments in an Adopted Plan of Flood Control

- S108, Legacy Encroachments
 - Rename “Existing” Encroachments to “Legacy” Encroachment
 - Rewrote entire section

A8, Standards

S112, Regulated Streams and Nonpermissible Work Periods

- Added criteria for authorizing Permitted Work during the Flood Season
- Time Variance Request process added
- Only minor corrections to Table 8.1 now

A8, Standards

S113, Dwellings and Structures Within an Adopted Plan of Flood Control

- New requirement for finished floor elevation such as three (3) feet above Design Water Surface Elevation, 100-year WSE, or 200-year WSE
- Prohibits construction of structures on Levee Section and within 10-feet of Levee Toes, or other flood control structures

A8, Standards

S113, Dwellings and Structures Within an Adopted Plan of Flood Control (continued)

- Requires hydraulics analysis to demonstrate no adverse hydraulic impacts
- 20-ft setback requirement for structures from a riverbank or streambank
- New residential developments may be subject to a standards higher than the 100-year event
- Requires compliance with California Building Code

A8, Standards

S114, Mobile Home and Recreational Vehicle Parks

- Prohibits new Mobile Home Parks except in floodways classified as Zone B
- Prohibits construction on Levee Section and requires 20-ft setback for new Mobile Home Parks from Levee Toes, and other flood control structures

A8, Standards

S115, Dredged, Spoil, and Waste Material

- Specifies that dredge, spoil, and waste materials be classified as non-hazardous
- Requirement to control moisture content to obtain proper compaction of the fill
- Applicant is responsible for demonstrating that placement will not be detrimental to the safety of the levee

A8, Standards

S116, Borrow Activities – Land & Channel

- Requires geotechnical investigation before initiating borrow activity
- Minimum required distance for locating a borrow area is increased to 300 feet on waterside and 300-500 feet on the landside
- Side slopes of the perimeter of a borrow area may not exceed 5h:1v

A8, Standards

S117, Supplemental Borrow Standards for Yuba River

- Increase from 300 feet to 400 feet the distance from the centerline of project and local levees where materials cannot be removed
- Increase from 300 feet to 400 feet the distance from the perimeter of any bank or levee protection work where materials cannot be removed

A8, Standards

S120, Levees

- Standards revised to be consistent with USACE standards (Design and Construction of Levees, EM 1110-2-1913) and USACE Design Guidance for Levee Underseepage, ETL 1110-2-569
- Requirements for seepage and stability analyses, settlement, erosion, wind setup, and wave runup analyses
- New standards for embankment and fill materials

A8, Standards

S120, Levees (continued)

- New standards for embankment construction and fill placement
- Requirement to relocate existing ditches, power poles, standpipes, distribution boxes, and other above ground structures outside of the Levee Right of Way
- Finished slopes of SPFC levees is 3h:1v or flatter; bypasses 4h:1v or flatter on waterside and 3h:1v or flatter on landside
- Bypasses shall have minimum 5 feet freeboard

A8, Standards

- S121, Erosion Control
 - Cobblestone protection slopes increased to 4h:1v or flatter
 - Alternative bank protection materials added
- S122, Irrigation and Drainage Ditches, Tile Drains, and Septic Systems
 - Added detention/retention ponds
 - The bottom of any unlined ditch, tile drains, septic system or leach field must be located above a projected 10h:1v slope projected from the toe of the levee

A8, Standards

- S123, Pipelines, Conduits, and Utility Lines
 - General criteria for construction revised
 - Changes to allowed materials of construction
 - Permits for pressurized pipelines through Levee Section have a 10-year permit life
 - Re-approval required to extend permit
 - Annual pressure testing required for pipelines in Levee Right of Way
- S124, Abandoned Pipelines and Conduit
 - Criteria for abandonment/removal changed

A8, Standards

- S125, Retaining Walls
 - No new retaining walls allowed within the Levee Right of Way
- S126, Fences and Gates
 - New fences not allowed on the Levee Section
 - New parallel fences must be 10 feet off the Levee Toe
- S127, Boating Facilities
 - Additional analysis may be required to verify seepage, slope stability, and erosion of levee section

A8, Standards

S128, Bridges and Low Water Crossings

- Embankment materials placed as fill shall be in conformance with Section 120, Levees
- Bridge piers / bents within the Floodway shall be constructed in the general direction of streamflow or overland flow
- Arch bridges clearance area added
- Soffits of replacement railroad bridges shall not be lower than prior bridge, but are not required to have specified clearance above DWSE
- New standards proposed for low water crossings

A8, Standards

- S129, Water, Oil, and Gas wells
 - Requires any unused wells in the floodway to be abandoned pursuant to the local county well abandonment standards and procedures
- S130, Patrol Roads and Access Ramps
 - Changes to patrol road materials requirements and construction criteria

A8, Standards

S131, Vegetation

- New requirement for Long-Term Maintenance Plans
- Irrigation systems must be at least 15 feet landward of the landside levee toe
- Tables 8.2 - 8.5, Changes to listings of suitable/unsuitable trees, ground covers and miscellaneous species
- This update does not attempt to make the regulations consistent with USACE ETL 1110-2-583, *Guidelines for Landscape Planting and Vegetation Management at Levees...*

A8, Standards

- S132, Bicycle Trails
 - Construction criteria modified to comply with levee embankment criteria, Section 120(a)(12)
 - Design of trails to incorporate privacy concerns
- S133, Supplemental Standards for Control of Residential Encroachment for Reclamation District 1000
 - Requires fences, walls and similar structures to meet RD 1000 standards

A8, Standards

S137, Miscellaneous Encroachments

- Tanks for storage of water or other liquids not permitted within the Levee Right of Way
- Seepage analysis required prior to approval of landside retention basins
- Mailboxes may not be buried into the Levee Section more than 12 inches
- Bus shelters shall be setback 20 feet from the landward Levee Toe

A9, Regulations for Implementation of CEQA S192, Fees for Preparation of Negative Declaration, Mitigated Negative Declaration, or EIR

- Reflects current Reimbursable Authority to collect costs from applicants when the Board acts as the CEQA Lead Agency
- Minimum deposits and scales of other deposits are specified for Board preparation and adoption of environmental documents
- Full payment of Board cost required prior to presentation to Board for approval or adoption

Next Stakeholder Steps

- Deadline for Written Comments to Board Staff
 - Friday, November 6, 2015
- Second Stakeholder Briefing
 - Public Workshop, Friday, February 12, 2016
- Board Adoption of Admin Draft Regulations and CEQA Negative Declaration
 - Public Board Meeting, Friday, March 25, 2016

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