

Central Valley Flood Protection Board
Proposed Regulation for
Permit and Inspection Fees

INITIAL STATEMENT OF REASONS

BACKGROUND & AUTHORITY

The Central Valley Flood Protection Board (CVFPB) is responsible for the protection of the flood control system within its jurisdiction in the Central Valley. A major portion of this responsibility is the regulation of encroachments that may negatively affect the function of the flood control system. CVFPB issues encroachment permits, authorizes work on the flood control system, and routinely inspects and enforces standards outlined in the California Code of Regulations, Title 23, Division 1 (Title 23). CVFPB's authority to carry out its duties is pursuant to Sections 8534, 8608, and 8710-8723 of the California Water Code.

Historically, CVFPB (formerly known as the Reclamation Board) has primarily been funded through the General Fund. In the past ten years, CVFPB received a portion of its funding from general obligation bonds for its additional regulatory and real estate needs arising from flood system improvement projects that were funded by the state from Proposition 1E. When these bond funds were expended, the 2017-18 Budget Act increased CVFPB's budget from the General Fund as a short-term replacement to allow CVFPB to continue its statutory responsibilities. The General Funds were provided on a 3-year basis (through fiscal year 2020-2021) by the legislature with the intention of CVFPB developing a long-term funding plan for sustaining future program funding. One of the strategies in the long-term funding plan is to implement permitting, project authorizations, and inspection services.

CVFPB has the authority to collect fees by California Water Code 8535.

“Consistent with Section 3 of Article XIII A of the California Constitution, the board, after holding at least one public hearing, may set and charge fees sufficient to cover the reasonable cost for the services it provides in carrying out its duties set forth in Sections 8502 and 8534, including, but not limited to, the issuance of and modifications to encroachment permits, inspections and enforcement of encroachments, and management and control of Sacramento and San Joaquin Drainage District property.” (Added by Stats. 2017, Ch. 26, Sec. 95. (SB 92) Effective June 27, 2017.)

PROBLEM TO BE ADDRESSED

Permitting and inspection services remains a core CVFPB function to reduce flood risk in the Central Valley, and if funding for these services is interrupted, permitting of new encroachments could be delayed or potentially halted, which could increase the likelihood of unauthorized encroachments being built and inadequate monitoring of permitted encroachments. Future funding is contingent upon reducing the General Fund budget by developing long-term funding streams, of which fees for permitting, project authorizations, and inspections are a part. It is necessary to implement reasonable fees to sustain these programs.

SUMMARY OF PROPOSED REGULATION

The proposed regulations are contained in Title 23 Division 1, Section 8, and adds a fee schedule in a new Appendix B. They impose fees on those seeking new encroachment permits or project authorizations as well as on existing encroachments that require a permit update. Project authorizations include minor alteration requests (§6 (e)) and maintenance requests (§6(d)). The fees are for permit review and issuance, project authorizations, and subsequent inspection services. The fees are based on the type of encroachment or action requested by an applicant. Permits which are subject to these fees will be charged a recurring fee for routine inspections in accordance with the frequency shown in the fee schedule.

BENEFITS OF PROPOSED REGULATION

The proposed regulation will generate revenue for permitting and inspection programs to help them become more sustainable. The fee amounts reflect the benefits of regulation to both the local economy, residents, and environment, as well as to the entire state. Those programs contribute to the reduction of flood risk by regulating the types of activities that occur on and around the flood control system in the Central Valley, and helps ensure compliance with those regulations by identifying issues in the field earlier, allowing them to be corrected before they become emergencies.

Adoption and implementation of this proposed action would begin to generate revenues to cover a portion of the costs for two of CVFPB's core functions, permitting and inspections, to reduce the burden on the State's General Fund.

BASIS FOR FEE CALCULATION

Each encroachment application, project authorization, and inspection requires the expertise of various staff assigned to review and approve various elements of the proposed work. Each type of staff has varying degrees of involvement in the permit review and inspection phases.

CVFPB analyzed data associated with permitting and authorization requests for encroachments within CVFPB's jurisdiction. All staff that review and process permits and authorizations record their time spent in a centralized database. Though it is impossible to predict the exact number and types of applications in the future, CVFPB used data from July 1, 2015 to June 30, 2017 to approximate future permit requests. CVFPB will continue to record staff time to better approximate the costs on which to base future fee updates. Also, cost data was obtained from staff time entry in SAP to examine the labor costs associated with each class of employee that has a part in processing permits and project authorizations. The estimated staff costs are conservatively based on employees that are at the maximum pay scale for each class. Combining the average staff time with average billing rates allows for an estimation of average costs to process permits and conduct inspections.

For encroachment inspection costs, CVFPB used estimations of staff time to conduct required construction and routine inspections, which includes travel, reporting, and coordination. An analysis of the staff classifications used to complete these activities was used to approximate the cost of a typical inspection.

The proposed fees presented in the fee schedule is not a complete cost recovery. The intent is to share the costs of permit applications, requests, and inspections between the applicant (through fees) and the state (through the General Fund). Staff will continue to track time

associated with permitting, project authorizations, and inspections for CVFPB to have additional data on which to determine whether future fee updates are warranted.

REQUIRED DETERMINATIONS, FINDINGS, AND ANALYSES

Alternatives to the Regulation

Although there are several alternatives that CVFPB initially considered to implement the regulation, CVFPB determined that there are no reasonable alternatives considered or brought to our attention which:

- *Would be more effective in carrying out the purpose for which the action is proposed,*
 - The proposed alternative of a flat fee basis for encroachments is the most efficient and reasonable choice for implementing fees for permit and inspection services.
- *Would be as effective and less burdensome to affected private persons than the proposed action,*
 - CVFPB considered an alternative to recover 100% of the costs associated with providing permitting and inspection services. This would require a final accounting of staff time and a billing to applicants after the service is provided. This would be a burden on applicants who need to construct their projects soon after a permit is issued. Applicants would not be able to effectively plan for the anticipated costs as no two projects are exactly alike.
- *Would be more cost-effective to affected private persons and equally effective in implementing the proposed regulation.*
 - A more cost-effective alternative for private persons would be to not implement a permit and inspection fee regulation, however CVFPB is required to develop funding mechanisms to sustain these critical services for flood risk reduction. The proposed fees are within CVFPB's authority under Water Code Section 8535 to collect reasonable fees for these services.

Evaluation of Inconsistency or Incompatibility With Existing State Regulations

CVFPB evaluated whether the implementation of fees for permitting and inspection activities is and found the proposed regulation is not inconsistent or incompatible with existing state regulations.

Economic Impact Assessment

CVFPB determined that the proposed regulations would not significantly affect the following:

- *The creation or elimination of jobs within the State of California.* The proposed fees are a fraction of the typical construction costs of the encroachments being permitted and inspected.
- *The creation of new business or elimination of existing business within California.* No new businesses are anticipated to be created nor are any existing businesses anticipated to be eliminated due to the fees imposed by this regulation.
- *The expansion of businesses currently doing business within the state.* The fees affect those seeking new permits for encroachments. The individuals and businesses that are seeking to build a project encroaching upon the State-federal flood control system are already prepared to pay for and construct their projects, and will incur a fee to have their project permitted and inspected by CVFPB.

Mandates on Local Agencies or School Districts

The regulation does not impose mandates on local agencies or school districts. Fees are assessed on the project type, not the type of applicant.

Effect on Small Business

Per Government Code 11346.3 (b)(4)(B), the definition of small business is considered to be independently owned and operated, not dominant in its field of operation, and has fewer than 100 employees. While the proportion of applicants that fit this definition who apply for permits in the future is unknown, of the permits within the scope of our analysis, approximately twenty one percent of all the businesses seeking permits were estimated to be small businesses. It is anticipated that this trend will continue, and so CVFPB has determined that the proposed regulation will affect small businesses.

Effect on Housing Costs

CVFPB determined that the proposed fee regulations would not have a significant effect on housing costs. The proposed permit and inspection fees imposed on dwellings which require a permit from CVFPB are a small fraction of the overall housing costs.

Business Reporting Requirements

The proposed fee regulation does not require a report from the businesses it impacts.

Comparable Federal Regulations

There are no comparable Federal regulations that require the collection of fees for permitting and inspection activities conducted by the State of California. In the absence of Federal regulations, CVFPB uses its authority under California Water Code Section 8535 to charge reasonable fees for permitting and inspections.

Consistency and Compatibility with Existing Federal Regulations

There are no comparable regulations in the federal Code of Regulations that address funding of state permitting agencies for flood control permits.

Mandated by Federal Law or Regulations

This regulation is not mandated by federal law or regulations, nor is it identical to previously adopted or amended federal regulations.

Other Applicable Matters Prescribed by Statute Specific to CVFPB Or Other State Regulations

There are no other applicable matters prescribed in state statutes or regulations specific to CVFPB that affect or would be affected by the proposed regulations.

Water Code Section 8535 Consideration

Based on the dataset used as a basis for setting the initial fees in this regulation, the amount charged for permitting, project authorizations, and inspection services do not recover 100% of the costs of those activities. Because each activity can vary in staff time (and hence cost), CVFPB considered it reasonable to set fees at approximately 75% of the costs found in the dataset, with the intent to update fees as additional data warrants it appropriate to do so. CVFPB considers this to be in conformance with Water Code Section 8535.