

**NOTICE OF PROPOSED RULEMAKING**  
**TITLE 23, DIVISION 1**  
**CENTRAL VALLEY FLOOD PROTECTION BOARD**  
**PERMIT AND INSPECTION FEES**

**September 21, 2018**

**NOTICE IS HEREBY GIVEN** that the Central Valley Flood Protection Board (CVFPB) proposes to adopt regulations pertaining to permit and inspection fees by amending the California Code of Regulations, Title 23, Division 1, Section 8.

**PUBLIC HEARING**

A public hearing on the proposed regulations will be held during the CVFPB's regular business meeting described below:

DATE: November 16, 2018  
TIME: 9:00 AM  
PLACE: Sacramento City Hall, 1<sup>st</sup> Flood Council Chambers  
915 I Street  
Sacramento, CA 95814

The hearing will be an item on the regular business meeting agenda, and can take place any time after the meeting commences at 9:00 am.

**SPECIAL ACCOMMODATION REQUEST**

Consistent with California Government Code Section 7296.2, special accommodation or language needs may be provided for any of the following:

- An interpreter to be available at the hearing;
- Documents made available in an alternate format or another language;
- A disability-related reasonable accommodation.

To request these special accommodations or language needs, please contact CVFPB at (916) 574-0609 as soon as possible, but no later than 10 business days before the scheduled hearing. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Consecuente con la sección 7296.2 del Código de Gobierno de California, una acomodación especial o necesidades lingüísticas pueden ser suministradas para cualquiera de los siguientes:

- Un intérprete que esté disponible en la audiencia;
- Documentos disponibles en un formato alterno u otro idioma;
- Una acomodación razonable relacionados con una incapacidad.

Para solicitar estas comodidades especiales o necesidades de otro idioma, por favor llame a la oficina del Consejo al (916) 574-0609 lo más pronto posible, pero no menos 2 de 10 días de trabajo antes del día programado para la audiencia del Consejo. TTY/TDD/Personas que necesiten este servicio pueden marcar el 711 para el Servicio de Retransmisión de Mensajes de California.

## WRITTEN COMMENT PERIOD

Interested parties wishing to submit written comments regarding the proposed regulations **must submit comments to CVFPB by 5:00 p.m. on Monday, November 5, 2018**, the designated close of the written comment period. Written comments and oral statements will be accepted at the hearing. CVFPB requests that comments be submitted by the November 5<sup>th</sup> deadline to allow staff to adequately address those comments prior to the hearing. Comments may be submitted by mail or email to the contact person listed below.

## AUTHORITY AND REFERENCE

### *Codes and Regulations*

California Water Code Section 8502, 8535, 8534

California Code of Regulations, Title 23, Division 1 (Title 23), Section 8: Applications

### *Forms*

Economic and Fiscal Impact Statement (STD. 399), May 2018

## POLICY STATEMENT OVERVIEW

CVFPB is the State of California's agency responsible for flood risk reduction in the Central Valley. As one of its core functions, CVFPB issues permits and oversees any alteration to the State-Federal flood control system within its jurisdictional authority. Permit application review, approval, issuance, and verification of compliance with Title 23 are funded through General Fund authorizations. Future authorizations of General Fund are contingent upon CVFPB developing a long-term funding plan and reporting on progress to the Legislature. Charging applicants for the review of permit applications and subsequent inspections of approved projects are a part of the long-term funding plan. In the 2018-19 Budget: Resources and Environmental Protection, the Legislative Analyst's Office recommended that the legislature grant temporary augmentation of General Funds to replace expended funding from general obligation bonds from Proposition 1E, contingent upon CVFPB developing revenue streams to begin offsetting those costs. CVFPB has never before charged a direct fee to applicants wishing to build encroachments or otherwise alter the State-Federal flood control system.

CVFPB has the authority to collect fees for permits and inspections by California Water Code §8535. It states:

“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.)*

Additionally, California Code of Regulations, Title 23 Division 1 (Title 23) describes collection of reasonable fees for inspections under §16(b): “The board may charge and collect a reasonable fee from an applicant to recover inspection costs, including staff or consultant time and expenses.”

The proposed fee schedule is the result of multiple internal and external stakeholder meetings and logistical considerations, and is attached to this Notice. The proposed fees include initial

permit fees, project authorization fees, construction inspection fees, and periodic inspection fees. For encroachment permits and authorizations for physical objects, obstructions, or activities that may negatively affect the flood control system within the CVFPB's jurisdiction, the proposed fee is based on the type of encroachment or authorization, and ranges from \$300-\$8,000. Construction inspection of these encroachments range from \$500 to \$1,000. Similarly, periodic inspections of permitted encroachments range from \$150 to \$1,000 and are performed on a schedule according to the encroachment type. These fees are required directly from permit applicants.

### **ANTICIPATED BENEFITS**

Implementing fees for permitting and inspection activities will help ensure CVFPB can continue to perform its regulatory obligations of flood risk reduction in the Central Valley. These activities help protect and maintain a well-functioning flood control system which benefits residents, businesses, and environmental habitat located directly behind levees by reducing the risk of catastrophic failures of the flood control system; and the entire state who gain from a thriving agriculture industry and wildlife habitat. The positions authorized in the *2017-18 Budget Act* provide field inspections, permitting, enforcement, and additional real estate support. These positions are all crucial to ensure the State is upholding its obligations to the federal government in managing the State-federal flood protection system in the Central Valley.

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. An analysis of permitting and inspection costs will be conducted approximately every two years and updates to the fee schedule will be made if they are warranted, in consideration with future budgets.

### **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.

### **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.

### **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.

## **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.

## **FISCAL IMPACT**

In accordance with Government Code Section 11346.5 (a)(6), CVFPB is providing an estimate of:

- the cost or savings to any state agency,
- the cost to local agencies or school districts that are required to be reimbursed,
- other nondiscretionary costs or savings imposed on local agencies, and
- the costs or savings in federal funding to the state.

For encroachment permitting costs, CVFPB analyzed existing data associated with permitting and authorization requests for encroachments within its 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 encroachment applications that will be received in the future, CVFPB analyzed data of applications received from July 1, 2015 to June 30, 2017 as an approximation of future permit requests. Additionally, an analysis of the different staff classifications with different billing rates who contribute to permit processing was completed. A summary of this data is summarized in Tables A & B. CVFPB will continue to record staff time to better approximate the costs on which to base future fee updates.

For encroachment inspection costs, CVFPB used estimations of staff time to conduct required inspections, including 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.

### *Costs or Savings to Any State Agency*

The proposed fees for permitting and inspections of encroachments are shown in Appendix B - Exhibit 1. The permitting and project authorization fees range from \$300 to \$8,000, depending on the type of encroachment. The permitting fee amounts follow general trends of CVFPB's costs for review and processing the different types of encroachments. Inspection fees range from \$500 to \$1,000 per permit. The fees are the same for any type of applicant, whether it is a private individual, business, local agency, state agency, or federal agency. These fees would result in a cost to a State agency seeking a permit to encroach upon CVFPB's jurisdiction. As shown in STD 399 Table 2: Applicant Analysis Summary, based on the dataset CVFPB reviewed, of the 108 applications for permits or project authorizations each year, 30 were State agencies. Assuming an average permit fee of \$1,000 and inspection fee of \$500, state agency applicants could cumulatively incur costs of approximately \$45,000 each year.

### *Costs to Local Agencies or School Districts that are Required to be Reimbursed*

Although fees are required regardless of the type of applicant, there are no costs to local agencies or school districts that are required to be reimbursed. Based on the dataset CVFPB reviewed, of the 108 applications for permits or other project authorization each year, 74 were local agencies. Assuming an average permit fee of \$1,000 and inspection fee of \$500, state agency applicants could incur costs of approximately \$110,000 each year across all local agencies. There were no school districts within the pool of applicants over this period.

### *Other Nondiscretionary Costs or Savings Imposed on Local Agencies*

There are no nondiscretionary costs or savings imposed on local agencies.

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

Permit and inspection services provided by CVFPB contribute toward the agency's mission of reducing the risk of catastrophic flooding to people and property within the California Central Valley. Additionally, the State of California has an interest in leveraging federal funding for flood system improvement projects, ongoing operation and maintenance activities, and flood control emergency management response. CVFPB works to ensure that the State Plan of Flood Control facilities are eligible for Public Law 84-99 Disaster Assistance funding and emergency response activities from the U.S. Army Corps of Engineers (USACE). Permitting and inspection services are part of CVFPB's efforts to maintain that eligibility and ultimately reduce the State's financial burden for emergency response to flood control emergency response. In the 2017 flood event, the State received PL 84-99 funding for flood emergency rehabilitation efforts. Future flood emergencies may yield a similar amount of funding through the PL 84-99 program for eligible portions of the flood control system.

## **SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS**

The proposed fee regulations are only imposed within the geographic area of CVFPB's jurisdiction in the Central Valley, and will not be an adverse economic impact statewide. CVFPB determined that the proposed fee regulations will not have a significant statewide adverse economic impact.

## **RESULTS OF THE ECONOMIC IMPACT ASSESSMENT (EIA)**

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.

The benefits of the proposed regulation to the health and welfare of California residents, worker safety, and the state's environment are numerous. It allows CVFPB to continue carrying out its mission to reduce the risk of catastrophic flooding to people and property within the California Central Valley. By imposing fees for encroachment permitting and inspections, CVFPB can continue to regulate and inspect over 20,000 encroachments within its jurisdiction. Routine inspections can spot issues before they become emergencies, and permit conditions give CVFPB the authority to enforce its regulations under Title 23. Permitted projects must be compliant with the California Environmental Quality Act (CEQA) to ensure the project's impact to environment has been considered, which the Board acts as a responsible agency. CVFPB also

has a worker safety program in conjunction with the Department of Water resources, to ensure a safe work environment for employees and contractors in the field and office.

### **COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES**

The proposed fee regulations are for any entity (including private individuals, businesses, public agencies) conducting activities or seeking to encroach on the flood control facilities under CVFPB's jurisdiction. The fees are required for new applications for permits, as well as existing encroachments that need updated permits. The fees would be due at three potential times for a given encroachment. First, permit fees would be due with the permit application or project authorization request. Next, the construction inspection fee would be due at permit issuance. And finally, routine inspections would be due prior to a scheduled routine inspection. The routine inspection frequency is listed on the fee schedule for each type of encroachment. The fees range from \$300 up to \$8,000 for each permit or project authorization. The construction and routine inspection fees range from \$500 to \$1,000. The total costs on a private person or business depends on the type of activity or encroachment they propose to build, and the overall number of permits needed. If multiple encroachments are proposed on one permit, only the encroachment with the highest fee will be charged. There are no proposed exemptions from these fees.

### **BUSINESS REPORT**

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

### **EFFECTS ON SMALL BUSINESSES**

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.

### **EFFECTS 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.

### **ALTERNATIVES STATEMENT**

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.

## **AVAILABILITY OF STATEMENTS & DOCUMENTATION**

CVFPB has made available the following documents which can be accessed online at <http://cvfpb.ca.gov/>

- Express Terms
- Initial Statement of Reasons
- Other information upon which the proposed rulemaking is based
- Full text of the regulation subject to substantial changes to the original proposal for at least 15 days prior to agency adoption/repeal/amendment of the resulting regulation.
- Final Statement of Reasons

Inquiries regarding the proposed action should be directed to the Contact Person listed below. This agency representative will, upon request, make the express terms, documentation, and public records related to the proposed action available.

## **CONTACT PERSON**

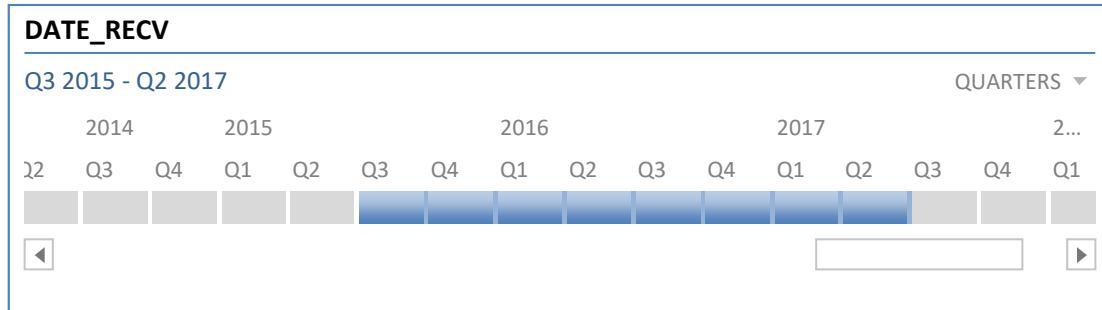
Written comments and questions concerning the proposed regulations may be sent to:

Name: Preston Shopbell  
 Address: 3310 El Camino Avenue, Suite 170  
 Sacramento, California, 95821  
 Phone: (916) 574-1437  
 Email: [preston.shopbell@cvflood.ca.gov](mailto:preston.shopbell@cvflood.ca.gov)

Backup Contract Person:

Name: Kelly Soule'  
 Address: 3310 El Camino Avenue, Suite 170  
 Sacramento, California, 95821  
 Phone: (916) 480-5390  
 Email: [kelly.soule@cvflood.ca.gov](mailto:kelly.soule@cvflood.ca.gov)

Table A  
 CVFPB EP Entry Time Recording Summary  
 Time Period: Date Received  
 July 1, 2015 to June 30, 2017 (FY 15/16 - FY 16/17)  
 Permit Issuance Date Captured to January 18, 2018  
 Total # of Permits Recorded = 96



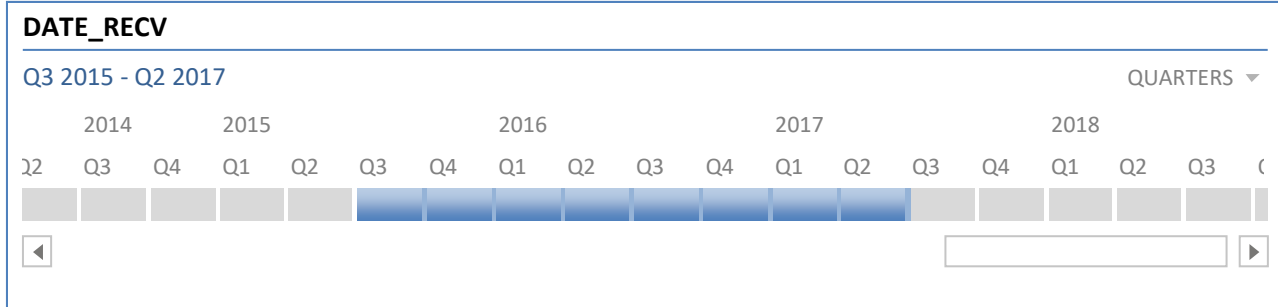
**Permits Issued not listed as category type "Other" or "Levee Works" or "XXX"**

Category	Number Received	Total Hours	Average Per Permit (hrs)
BIKE TRAIL	1	59.1	59.1
Boating Facilities	7	159.2	22.7
Borings	2	9.3	4.6
Bridges - Pedestrian	2	52.0	26.0
Bridges - Vehicle	25	844.5	33.8
Dams/Structures	2	103.3	51.6
Dwellings	7	116.0	16.6
Erosion Control	1	23.1	23.1
Fences	2	49.1	24.6
Overhead Utility	3	53.1	17.7
Pipelines/Conduits	35	629.1	18.0
Poles	3	59.0	19.7
Ramp	1	4.5	4.5
Retaining Wall	1	19.0	19.0
Solar Array	1	17.8	17.8
Stairs	1	12.1	12.1
Structures	2	31.2	15.6
<b>Grand Total</b>	<b>96</b>	<b>2240.85</b>	<b>23.3</b>



**Table B**  
**CVFPB EP Entry Time Entry Per Classifications**

Time Period: Date Received  
**July 1, 2015 to June 30, 2017 (FY 15/16 - FY 16/17)**  
 Permit Issuance Date Captured to January 18, 2018  
 Total # of Permits = 96



Classifications		% of Application Review Time	Max Loaded Hourly Billing Rate	Interim Calc for Weighted Avg Billing Rate
WRE	Engineer, Water Resources	81.9%	\$ 164	\$ 134
AGPA	Associate Governmental Program Analyst	4.3%	\$ 100	\$ 4
SWRE	Senior Engineer, Water Resources	3.2%	\$ 201	\$ 6
SES	Senior Environmental Scientist	6.3%	\$ 126	\$ 8
LC	Legal Counsel	1.1%	\$ 210	\$ 2
EPM	Environmental Program Manager I	1.1%	\$ 180	\$ 2
SPE	Supervising Engineer	2.1%	\$ 220	\$ 5
Total		100%		

**Weighted Average Billing Rate: \$ 162**