

Central Valley Flood Protection Board
Workshop
February 8, 2019

INFORMATIONAL BRIEFING

Automatic Board Order Discussion

BRIEFING SUMMARY

Background

Issued in 1971, Manager Guide 20 provided policy and program guidance regarding the control of encroachments on project works and Board adopted plans. The document utilized Water Code to provide a policy for Board staff to categorize encroachments and take action based on those categories. Actions for some of the categories included the issuance of Automatic Board Orders (ABOs), which were condensed versions of the permits the Board typically issues today.

Now that many of the encroachments that were issued ABOs are at the end of their useful design lives, they need major repairs or replacement. By being included on an ABO, the maintenance responsibility for these encroachments is unclear, because no application or acceptance of responsibility was required from the stated encroachment owner, and most have not been updated from their initial issuance.

Projects and efforts such as the Department of Water Resources' (DWR) implementation of the Deferred Maintenance Project (DMP), which seeks to identify and repair high-risk pipes, some of which are included on ABO's have brought forth a need for a Board policy to address this issue.

Current Status

Board staff is working with DWR's Flood Maintenance Office to research and verify that pipes that are scheduled for repair through DMP are listed in the corresponding USACE Supplement to the Standard Operations and Maintenance Manual, and that they are system features, not being used for private benefit.

At this workshop, staff will present a background on ABOs, the existing policy, how it affects projects like DMP, discuss the need for an updated policy, and recommend a new Board policy on ABOs. Based on the outcome of that discussion, staff may present a policy to the Board at the February 22, 2019 meeting for consideration to approve.

Attachments

- A. Manager Guide 20 (1971)
- B. Draft Policy Resolution on ABOs

STATE OF CALIFORNIA
RESOURCES AGENCY
THE RECLAMATION BOARD

January 26, 1971

MANAGER GUIDE NO. 20

This guide was adopted by the Reclamation Board at its meeting of January 22, 1971 and supersedes Manager Guide No. 20, dated June 13, 1968.

PURPOSE: The purpose of this guide is to establish Board policy and program guidance for the control of encroachments on project works and Board adopted plans.

1. Definitions

a. Encroachment:

Use for any purpose of either flood control project works or the area covered by an adopted plan.

b. Project Works:

Physical works authorized by State and Federal legislation for the primary purpose of controlling floods.

c. Adopted Plan:

Any plan formally adopted by the Board or the Legislature for the primary purpose of reclamation or the control of floods.

d. Designated Floodway:

An adopted plan which defines a waterway area required for the passage of specified flood waters.

e. Non-project Works:

Physical works in the Board's area of jurisdiction which have not been authorized by the Federal Government or the State Legislature for the purpose of controlling floods.

f. Standards:

Criteria and/or specifications adopted by the Board for the design and/or construction of encroachments.

2 (1)

2. Legal Authority

- a. All code sections cited are from the Water Code.
- b. Any proposed encroachment must be approved by the Board prior to its installation.
- c. The Board may deny a proposed encroachment if it will, in the judgment of the Board:
 - (1) Be injurious to or damage any work necessary to any plan of flood control adopted by the Board or the Legislature (Section 8723); or
 - (2) Interfere with the successful execution, functioning or operation of any plan of flood control adopted by the Board or Legislature (Section 8723); or
 - (3) Unduly impede the free flow of water (Sections 8706 and 8707); or
 - (4) In any way interfere with or obstruct operation and maintenance of the project works (Section 8708);
 - (5) Be inimical to the welfare of residents and holders of land in the Central Valley (Section 8532);
 - (6) Violate any standards adopted by the Board (Section 8608).

3. Statement of General Policy

It is the policy of the Board:

- a. To allow encroachments which are compatible with flood control uses;
- b. To immediately initiate legal action against anyone or any agency that starts construction of an encroachment without a temporary or regular Board order, or any person or agency who violates the conditions of a Board order;
- c. That all unauthorized encroachments existing upon adoption of this guide will not be subject to current adopted standards, but will be subjected to the criteria test of Paragraph 2.c (1) through (5) above.

- d. To review proposed encroachments which are not in the area of an adopted plan for possible interference with some adopted plan. If no such interference exists, the Board will make appropriate recommendations to the governing or maintaining agency;
- e. Where a proposed encroachment would require relocation under a known future project, to advise the applicant of the definitive project work to be accomplished by him in the vicinity of his encroachment.
- f. To seek the recommendations of the responsible maintaining agency and other interested agencies prior to considering the application.
- g. To refuse to consider applications unless accompanied by adequate plans.

4. Costs

With respect to costs, the following are the policies of the Board:

- a. The applicant shall bear the costs of compliance with terms and conditions of the Board order;
- b. The applicant shall bear the costs of maintenance of the encroachment, including removal, restoration or replacement due to changed owner requirements or deterioration;
- c. The applicant or owner of any unauthorized encroachment shall bear the cost of relocation required during the construction of project works;
- d. The applicant shall bear the costs of relocation of an authorized encroachment, if he elects to install the encroachment without completing defined project work as determined by the Board;
- e. The applicant will not be required to bear the costs of inspection, except in unusual cases.

5. Board Program

a. The following program will be initiated during Fiscal Year 1970/71 as part of a long range program to control encroachments.

b. Implementation of the program:

Action

Agency

(1) For encroachments on project works

- | | |
|---|----------------------------------|
| (a) Inventory existing encroachments.
If under Board order, give application number; otherwise indicate location and name and address of owner. If installed or relocated by Corps of Engineers or Board, so indicate. | Department of
Water Resources |
| (b) Categorize: | Department of
Water Resources |
| I. Relocated or installed by
Corps or Board during project
construction: | |
| A. Maintenance by maintaining
agency; | |
| B. Maintenance by owner,
including municipal, county
or state bridges. | |
| II. Compatible with flood control re-
quirements but Board approval not
obtained; | |
| III. May be approved if modified; | |
| IV. Removal mandatory - constitutes
a nuisance: | |
| A. Removal by owner; | |
| B. Removal by maintaining agency. | |
| (c) Send categorized listing to maintain-
ing agency and Corps of Engineers for
comment. | Board |
| (d) Approve the categorization listing
after considering the Department of
Water Resources, Corps of Engineers
and Board staff recommendations. | Board |

<u>Action</u>	<u>Agency</u>
(e) Action on Category I. items:	
1. Board has automatically approved the plan by approving construction plans;	
2. For Category I.A. - list all structures in turnover letter and prescribed maintenance in Corps of Engineers' maintenance manual;	Board
3. For Category I.B. - turnover to owner through an automatic Board order with construction plans attached. Copies of Board order to maintaining agency and Corps of Engineers.	
(f) Action to get Category II encroachments under approval of plans:	Board
1. Based on inventory and Board approval, automatically issue Board order;	
2. Maintaining agency and Corps of Engineers advised by copy of Board order.	
(g) Action to get Category III encroachments modified and under approval of plans:	Board
1. Request owner to apply for approval of plans;	
2. Advise him of necessary modifications and of the policy on payment of relocation costs;	
3. Give him reasonable deadline to apply;	
4. Maintaining agency and Corps of Engineers advised by copy of letter.	

<u>Action</u>	<u>Agency</u>
(h) Action to get Category IV encroachments removed:	Board
<u>1.</u> Category IV.A. -	Board
<u>a.</u> Order owner to remove;	
<u>b.</u> Give reasonable deadline;	
<u>c.</u> Advise owner that failure to abide by order will result in legal action;	
<u>d.</u> Maintaining agency and Corps of Engineers advised by copy of letter.	
<u>2.</u> Category IV.B. -	Board
<u>a.</u> Order maintaining agency to remove;	
<u>b.</u> Give reasonable deadline;	
<u>c.</u> Advise agency that failure to comply will result in initiation of maintenance area proceedings.	
<u>d.</u> Corps advised by copy of letter.	
<u>3.</u> In some cases in IV.A. and B., the Board may declare an emergency and remove the encroachment. In such cases the Board will determine whether to bring action to recover costs or not.	
(i) Action to abate Categories III. and IV., if owner fails to respond or act:	
<u>1.</u> Designated Board member or Chief Engineer holds hearing under provisions of Section 8730 through 8742;	
<u>2.</u> Member or Chief Engineer reports recommendations to Board;	
<u>3.</u> Board orders removal and requests Attorney General to initiate legal action;	Board

Action

Agency

4. Legal action:

a. Prepare basic data for complaint and furnish to Attorney General;

Dept. of Water Resources

b. Prepare complaint and abate under appropriate code sections.

Attorney General

(j) Action to effect removal of Category IV.B. remaining if maintaining agency fails to act:

1. Department of Water Resources to make finding to initiate maintenance area formation;

Dept. of Water Resources

2. Board proceeds with formation of maintenance area.

Board

(2) For encroachments in area of newly adopted plan or designated floodway:

(a) The procedures outlined in Paragraph 5.b. above apply;

(b) Local maintaining agencies, if any, and local public entities will be advised of this Board's jurisdiction and of the necessity to obtain Board orders before placing any new encroachments;

(c) Signs will be posted in the area to warn local residents of the Board's jurisdiction;

(d) Local governing agencies will be requested to enact flood plain management regulations to control at least the primary floodway;

(e) In the event the local governing agency does elect to regulate the flood plain, negotiations will be conducted leading to an agreement similar to the agreement with Tehama County;

(f) Any such agreement will be brought before the Board for approval;

(g) Annual inspections for encroachments will be conducted by the Department of Water Resources and a report rendered to the Board with recommended action.

6. Priorities of Effort

The overall priorities for allocation of effort are as follows (see Paragraph 5.b.(2) above for full category descriptions):

- a. Known encroachments which are nuisances and should be removed (Category IV.);
- b. Requiring compliance with conditions;
- c. Processing of current applications;
- d. Issuance of permits for relocations effected by project work;
- e. Known encroachments which could be modified (Category III.);
- f. Known encroachments which are compatible, but are not covered by a Board Order (Category II).

A. E. McCollam

A. E. MCCOLLAM
Chief Engineer and General Manager

STATE OF CALIFORNIA
THE NATURAL RESOURCES AGENCY
CENTRAL VALLEY FLOOD PROTECTION BOARD
RESOLUTION NO. 2019-XX FOR
AUTOMATIC BOARD ORDERS

BACKGROUND:

- A. **WHEREAS**, the authority of the Central Valley Flood Protection Board, formerly the Reclamation Board, (collectively hereinafter the “Board”), to control encroachments within the adopted plan of flood control exists in Water Code §§8534, 8608, and 8710-8723.
- B. **WHEREAS**, as part of a long-range program to control encroachments within the adopted plan of flood control, on January 26, 1971, the Board established policy and program guidance through the adoption of Manager Guide No. 20 (Manager Guide). In this document “adopted plan” is defined as “any plan formally adopted by the Board or the Legislature for the primary purpose of reclamation or the control of floods.” The Manager Guide provided a shorter permit approval and issuance process to be followed than the existing adopted Standards provided at that time.
- C. **WHEREAS**, Board staff utilized the Manager Guide to efficiently inventory and categorize existing encroachments, which enabled the Board to take action on these encroachments. Section 5(1)(b) of the Manager Guide categorized existing encroachments as follows:
- I. Relocated or installed by Corps or Board during project construction.
 - A. Maintenance by maintaining agency;
 - B. Maintenance by owner, including municipal, county, or state bridges.
 - II. Compatible with flood control requirements but Board approval not obtained.
 - III. May be approved if modified;
 - IV. Removal mandatory – constitutes a nuisance:
 - A. Removal by owner;
 - B. Removal by maintaining agency.
- D. **WHEREAS**, in §5(1)(e)-(f), the Manager Guide provides as follows:
- (e) Action on Category I. items:
 1. Board has automatically approved the plan by approving the construction plans.
 2. For Category I.A. – list all structures in turnover letter and prescribed maintenance in Corps of Engineers’ maintenance manual;
 3. For Category I. B. – turnover to owner through an automatic board order with construction plans attached. Copies of Board Order to maintaining agency and Corps of Engineers.
 - (f) Action to get Category II encroachments under approval of plans:
 1. Based on inventory and Board approval, automatically issue Board order;

2. Maintaining agency and Corps of Engineers advised by copy of Board order.”

- E. **WHEREAS**, pursuant to the Manager Guide, from approximately 1971 to 1976, Board members approved inventoried lists of encroachments and delegated the authority to the General Manager to issue Automatic Board Orders (ABOs) for encroachments in Categories I.B. and II. Approximately 2,400 ABOs were issued from 1971 to 1976 to the land owners where the encroachments existed.
- F. **WHEREAS**, available Board records show no written approval of individual ABOs by the U.S. Army Corps of Engineers (USACE). Without written approval, these encroachments are considered “unpermitted” by the USACE.
- G. **WHEREAS**, encroachments that are listed in the corresponding Supplements to the USACE’s Standard Operations and Maintenance (O&M) manuals or as-built drawings that are necessary for the system to function, drain adjacent lands, and were not intended for private use or benefit are considered a “system feature” and must be maintained by the local flood control maintaining agency (LMA).
- H. **WHEREAS**, after further evaluation by Board staff, certain encroachments authorized by ABOs have been found to be included in the corresponding O&M manuals or associated as-built drawings that should have instead been considered system features.
- I. **WHEREAS**, available Board records show no written confirmation or acceptance of ownership or maintenance responsibilities by the parties who were issued ABOs.

NOW, THEREFORE THE BOARD FINDS:

- 1. That the above recitals are true and correct.
- 2. That the Manager Guide, in its most recent approved form (1977), has been left withstanding by the Board, and therefore is still in effect.
- 3. That while the premise and authority of the Manager Guide were valid, the implementation of the policy resulted in certain system features being incorrectly categorized as encroachments, and hence incorrectly included in the ABOs. As a result, the maintenance responsibilities for some system features, including drainage pipes are uncertain.
- 4. The policy and program guidance in the Manager Guide does not provide enough documentation for ABO’s to be considered valid encroachment permits.

NOW, THEREFORE, BE IT RESOLVED, THAT THE BOARD ESTABLISHES THE FOLLOWING POLICIES:

- 1. The Manager Guide is hereby rescinded.
- 2. Encroachments included in an ABO that:

- a. Are determined to be for private benefit, and not for system function, will require a new encroachment permit in accordance with the current version of California Code of Regulations, Title 23, Division 1 (Title 23) after the following tasks have been met:
 - i. Written acknowledgement, in the form of an application from the appropriate party for the assumption of responsibility and conditions of the proposed permit is obtained.
 - ii. For encroachments on project works, a letter of permission from USACE is obtained.
 - iii. An endorsement from the proper LMA is obtained.
 - iv. Appropriate land rights are secured.
 - b. Are determined to be necessary for system function, and are therefore system features:
 - i. Shall be verified in the corresponding O&M Manual or Project As-Built.
 - ii. Shall be maintained by the LMA.
 - iii. Shall be tracked through the Department of Water Resource's Levee Logs and Underground Crossing Inventory Program as appropriate.
3. The Board hereby delegates authority to the Executive Officer to carry out the permitting activities stated in this Resolution in accordance with the provisions in Section 5 of Title 23.

This resolution shall constitute the written decision of the Board in the matter of acceptable policy regarding ABOs.

PASSED AND ADOPTED by vote of the Board on Month XX, 2019

William H. Edgar, President

Jane Dolan, Secretary