

State of California  
Central Valley Flood Protection Board  
California Code of Regulations, Title 23. Waters.  
Division 1. Central Valley Flood Protection Board  
Chapter 1. Organization, Powers, and Standards

**INITIAL STATEMENT OF REASONS**

**PROBLEM STATEMENT**

The Central Valley Flood Protection Board (Board) was established by the California Legislature in 1911 as the “Reclamation Board”. It was renamed the Central Valley Flood Protection Board in 2008. The Board is a regulatory agency responsible for ensuring that appropriate standards are met for the construction, maintenance, and protection of the flood control system that protects life, property, and wildlife habitat in California’s vast and diverse Central Valley from the devastating effects of flooding. The Board issues and revokes encroachment permits which are required for every proposal or plan of work in any area for which there is an Adopted Plan of Flood Control as defined by California Code of Regulations (CCR) Title 23, Division 1. The Board enforces violations of the rules governing encroachments, works with other agencies to improve flood protection structures and keeps watch over the Central Valley’s flood management system. The Board also has the authority to revoke previously issued permits.

The Board has been issuing encroachment permits for many decades and for many reasons sometimes permits must be revoked. These reasons include instances where conditions have changed, where the encroachment is no longer being used or was never used, or where the facility has been determined to be part of the adopted plan of flood control and is not an encroachment for private benefit. The Board operates an extensive database containing records of all permits that have been issued. For this database to accurately reflect active permits for actual private encroachments, many permits need to be revoked and removed from the database.

Under the rules currently in effect, revocation of a previously issued permit is a lengthy and costly process. It involves issuing a notice to the permittee or property owner by certified mail or hand delivery and a public hearing before the Board. (Cal. Code Regs., tit. 23, §25 and §28). The current rules require that all documents to be relied upon at the public hearing be served on the Respondent with the Notice of Revocation thirty (30) days prior to the public hearing. (Cal. Code Regs., tit. 23, § 25). There are no exceptions to these rules for permits for encroachments which have been removed, were never constructed, have been determined to be elements of the adopted plan of flood control or are otherwise non-contentious. There is no simple mechanism available for a permittee who wishes to surrender a previously issued permit.

In addition, while reviewing the existing regulations for this proposal the Board staff observed that California Code of Regulations, Title 23, section 5(g) is no longer accurate because the Water Code sections to which it refers have been repealed. For that reason, in this proposal the Board seeks to remove section 5(g) from its regulations.

**BENEFITS**

A streamlined process for revocation of some permits will allow Board staff to update the Board's database of official records to accurately reflect the actual and active permits throughout the flood system. It will free staff time and resources for other crucial work of the Board, including enforcement actions against parties who are violating the regulations designed to protect the flood control system and the people and property in California's Central Valley. It will also allow landowners and permittees the ability to surrender a permit more efficiently when they no longer wish to construct the proposed encroachment.

## **PURPOSE**

The overall purpose of the proposed revisions is to streamline the process for revocation of encroachment permits where the proposed revocation is non-controversial and unopposed.

- The purpose of the amendments to section 5(a) is to authorize delegation of administrative permit revocations to the Executive Officer.
- The purpose of revocation of section 5(g) is to conform with Board powers that are vested by the Water Code. This subsection refers to Water Code section 8709.4(c) and section 8709.5, both of which have been repealed.
- The purpose of revisions to section 28(b) is to exempt Administrative Revocations from the hearing requirements contained in section 28(b).
- The purpose of adding section 28(d) to the regulations is to authorize the administrative revocation process.
- The purpose of adding section 28.1 is to add procedures to be followed in the administrative permit revocation process, as distinct from the other more formal and lengthy process for the revocation of encroachment permits.

## **NECESSITY**

The Board is responsible for over 1,600 miles of federally authorized levees in the Central Valley and regulates encroachments within additional designated floodways and regulated streams. It has approximately 64 staff members. Only six staff members are assigned to the Enforcement Section, which is responsible for taking all enforcement and permit revocation actions. Permit revocation under the current regulations can take between 30 and 150 hours or more in staff time which could be used more productively in enforcement actions where health and safety are in peril. Serious violations of Board regulations can result in catastrophic failure of levees and other flood control structures and facilities. It is crucial that the limited resources of the Board be used to correct these failures. However, it is also important that Board records be correct and up-to-date and for the Board to determine what is and what is not a current and active permit. There are many encroachment permits which are no longer needed or for which no one claims responsibility. These are the types of permits that this expedited process of revocation is designed to address.

## **ECONOMIC IMPACT ASSESSMENT/ANALYSIS**

Under current regulations, revocation of a Board permit can take between 30 and 150 hours of staff time in investigation, preparation of the documents and presentation of a public hearing before the Board. A low estimate for salary and benefits for staff (often Senior Engineers) is \$100 per hour. On the

low end, these proceedings cost the State of California \$4,000 per revocation. Staff estimates that there are hundreds of permits on the Board's books that should be revoked for various reasons. Most of the revocations that the proposed rules address will receive no opposition. Significant staff time and resources can be saved with no detriment to permittees if the proposed regulations are adopted. Thus, the economic impact to the Board should be a net savings.

At one point in its long history, the Board issued "automatic board orders" (ABO's). These orders issued permits for existing, unpermitted encroachments usually without United States Corps of Engineer's (USACE) approval. In addition, some of the permits were issued for elements of the adopted plan of flood control and not for private encroachments. The permits that were incorrectly issued for elements of the adopted plan of flood control must be revoked and removed from the Board's inventory of permits. In some cases, the maintenance for such features is currently unclear, but if the permits are revoked, the clear responsibility for maintenance will lie with the local maintaining agencies (LMA's), which may increase the costs to these agencies. Board staff estimates that there are approximately 2,400 ABO's in the Board's inventory of permits and approximately one third of these permits are for elements of the adopted plan of flood control. In many instances, the local maintaining agencies are already maintaining these facilities. If the local maintainers are required to take on additional maintenance responsibilities, Board staff estimates that the LMA's will be subject to minor additional maintenance costs. In some areas of the flood control system, the State of California, through its maintenance areas (MA's), is responsible for the maintenance of system features. Because the proposed regulation provides a streamlined permit revocation process, the MA's will be responsible for additional features. However, in most instances, any elements of the adopted plan of flood control that were wrongly identified as private encroachments are already being maintained by the MA's.

The Board does not expect that the adoption of the proposed regulations will either create or eliminate jobs within the State. The Board does not expect that the adoption of the proposed regulations will affect the expansion of businesses in the State. The Board believes that the adoption of the proposed regulations will improve the safety and welfare of citizens of the State because the Board's enforcement staff will be freed to focus on remedying violations of the flood control system regulations.