Central Valley Flood Protection Board

REQUESTED ACTION
AGENDA ITEM 11B

Progress Report and Policy Discussion on Updating the Board's Title 23 Regulations

September 26, 2014

Presentation Outline

- Brief Update on Recent and Current Activities
- Recent Policy and Procedure Developments
- Recent Board Permitting Practices
- Proposed Additions to the Track 3 Technical Update
- Policy Discussions and Staff Recommendations
- Summary of Recommendations

Eight-Track Program

Approved July, 2014

1. Enforcement Actions
2. Administrative Fines

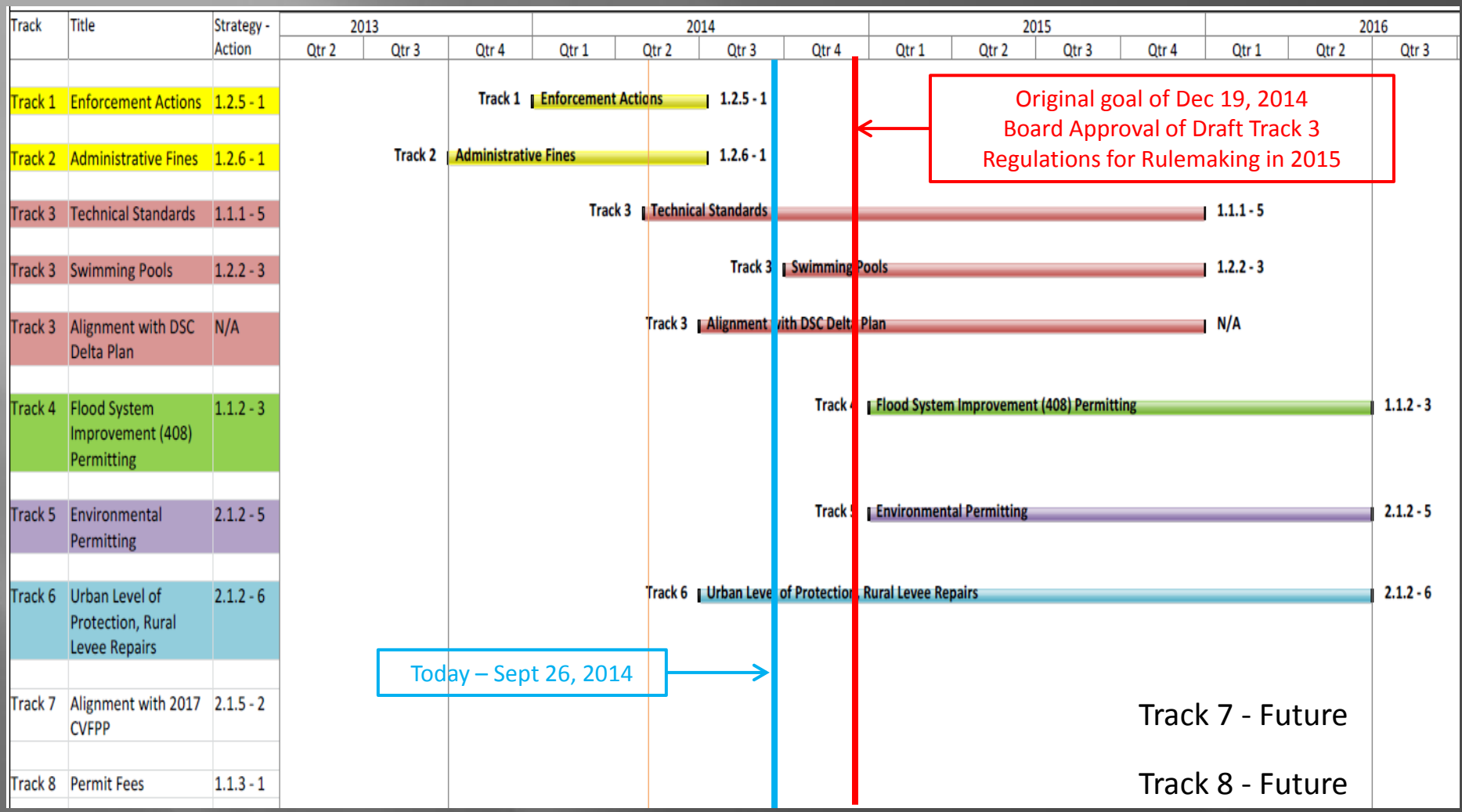
Current Tracks (2014 through 2016)

3. Technical Standards, Swimming Pools, Delta Plan Alignment
4. Flood System Improvement (33 USC 408) Permitting
5. Environmental Stewardship Permitting
6. Urban Level of Protection, Rural Levee Repairs

On Hold for the Future

7. Alignment with 2017 CVFPP
8. Permit Fees

8 Track Program Schedule (as of May 2014)



Recent / Current Activities

- Review of original regulations and prior updates in response to Water Code amendments:
  - 2007 Flood Legislation (update approved Dec 2009)
  - 2009 Cleanup of 2007 Flood Legislation (update approved Feb 2012)
  - 2013 Enforcement Authority Legislation (update approved July 2014, distribution Sept 2014)
- Interviewed 2011 Admin Draft writers and contributors
  - Additional comments received through fall 2011 but not incorporated
  - Partially reviewed by USACE, DWR, CCVFCA, Caltrans PG&E, and others
  - Some unresolved policy matters
- Interviewed DWR technical support staff who worked on 2011 draft
- Completed first draft of a new section on swimming pools

Recent / Current Activities (cont)

- The 2011 proposed revisions comprised 45 sections of Title 23
- 7 of the 45 sections were subsequently revised in February 2012 update
- None of the 45 sections were revised in the July 2014 update
- The 2011 proposed revisions were merged into the following sections:
  - Section 4, Definitions
  - Section 11, Variances
  - Section 16, Permit Conditions
  - Section 17, Emergencies (non-substantive)
  - Section 103, Notices and Hearings (non-substantive)
  - Section 109, Right of Review of Delegated Authority (non-substantive)
  - Section 110, Review Procedures (non-substantive)
- Met with Delta Stewardship Counsel staff to discuss the Delta Plan "Covered Actions" process, and how it may impact our regulations

Recent / Current Activities

- Met with USACE permitting partners to re-engage – their 2011 review was extensive, but incomplete
- Board and USACE staffs merging and reviewing 2011 draft and comments
- Immediate plan is to develop an updated Board / USACE "Working Draft" with which reflects the current practices and policies of the Board and USACE – this requires additional staff work / time
- Announcements to agency stakeholders of upcoming request for comments on updated "Working Draft"
  - Board Coordinating Committee
  - California Central Valley Flood Control Association
  - RFMP meetings

Working Draft Review and Comment

- This "Working Draft" will be vetted by the agency stakeholders to develop a Final Administrative Draft
- Staff's goal is to deliver the Final Administrative draft to the Board in the first quarter of 2015 with recommendations to:
  - approve the Final Administrative Draft, and
  - direct staff to begin the public review process through the Office of Administrative Law
  - Initial project schedule included Board approval of draft Track 3 update by December 2014, and completion of public rulemaking process by December 2015.

Policy Discussion 1 – USACE 408 Policy

- USACE 33 USC 408 Policy and Procedural Guidance (EC 1165-2-216, July 2014)
  - Applies to proposed actions that build upon, alter, improve, move, occupy, or otherwise could affect the federally authorized project
  - All proposed actions (projects) within real estate interests of the federal project require USACE "permission" and require NEPA compliance
  - Actions include traditional encroachments, flood system alterations and improvements (formerly 408 major / minor), and environmental stewardship projects (habitat restoration, mitigation banks, etc.)
- Should language be added in Track 3 to reflect the USACE policy so that Board clients and stakeholders can more clearly understand the federal 33 USC 408 impacts to the Board permit application process? (SR = YES)

Policy Discussion 2 – Board Permitting Practices

- Board uses an 18-year old encroachment permitting process to evaluate and make decisions on all types of proposed projects
  - Should the regulations move away from "encroachment permits" to consider three types of "permits"?
    1. traditional encroachments
    2. flood system alteration & improvement projects
    3. environmental stewardship projects
  - Should sponsor-led flood system alteration and improvement projects be approved via an assurance or other agreement, rather than through a permit?
  - Should the "Sample Permit" be removed from Appendix A?
- Should language be added in Track 3 to reflect the above practices to make the permit application process more transparent? (SR = YES)

Policy Discussion 3 – Project Review Practices

- USACE Hydraulic Screening and Analysis Practices (July 2014)
  - USACE staff recently briefed the Board on hydraulic screening / analysis practices used during their technical review of permit applications
- Key briefing topics included:
  - Original 1955 / 57 project design flows
  - Operations & Maintenance manual specified flows
  - Other annual chance exceedance flows (100-yr or 200-yr floods)
  - Flood risk threshold criteria for acceptable water surface elevation impacts and floodway blockage
- Current definitions in Title 23, Sections 4(j) and 4(k) allow the Board flexibility to determine appropriate "Design Flood" and "Design Flood Plane", but lack specificity – should examples be cited?
- Section 5(a)(3) refers to a "de minimus" hydraulic impact without quantification of numerical thresholds – should we be more specific?
- Should language be added to Track 3 to reflect the USACE hydraulic screening practices, and to provide more clarity and specificity on hydraulic impact analysis? (SR = YES)

Policy Discussion 4 – Other Considerations

- Variances to Board Standards
  - Board variance practices may be considered cumbersome
  - Should the staff consider revisions to the Board's Variance process (described in Section 11) to bring it up to date and consistent with the proposed updates to the technical standards (Article 8), and should the Board be able to grant variances to other sections of the regulations?

    (SR = YES)

- Vegetation Standards
  - The 2014 Water Resources Reform and Development Act included a requirement that the USACE "carry out a comprehensive review of the guidelines [Corps of Engineers policy guidelines for management of vegetation on levees] in order to determine whether current Federal policy relating to levee vegetation is appropriate for all regions of the United States."
  - In response plaintiffs dismissed the June 2011 lawsuit challenging implementation of USACE vegetation management policy in California
  - USACE has 18 months from WRRDA enactment to conduct this review
  - Should Section 131, Vegetation remain tabled while the USACE conducts its review? (SR = YES)

Summary of Staff Recommendations

- Staff recommends that the Board approve the staff recommendations to develop additional regulatory language (to be included with the Track 3 update of the Board's technical standards) to accomplish the following:
  - reflect recent federal U.S. Army Corps of Engineers 33 USC Section 408 policy changes so that Board clients and stakeholders can more clearly understand federal impacts to the Board permit application process
  - reflect a move away from only "encroachment permits" to "permits" with three types (encroachments, flood system alterations and improvements, environmental stewardship)
  - approve sponsor-led flood system alteration and improvement projects through an assurance or other agreement instead of a Board permit
  - remove the Sample Permit from Appendix A

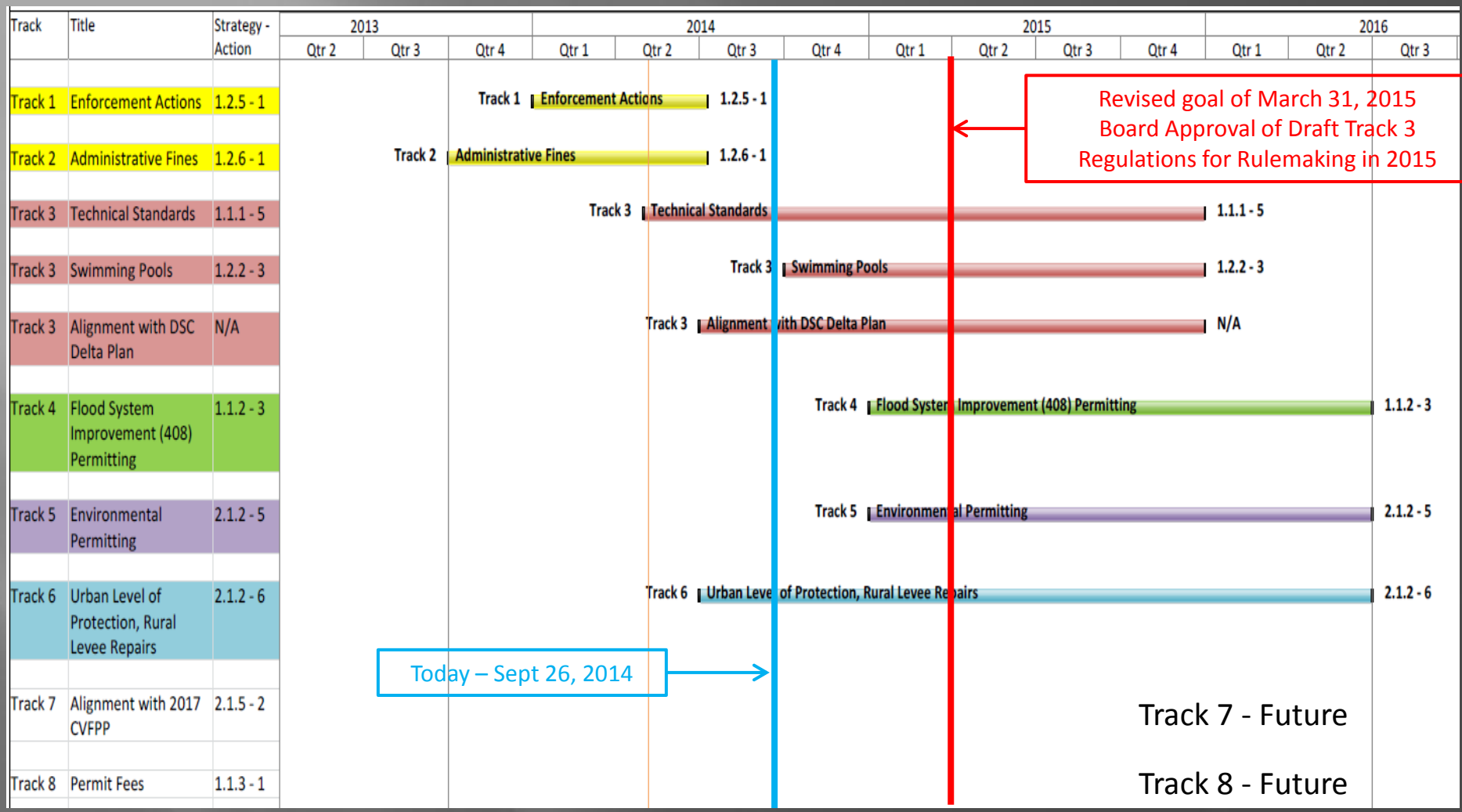
Summary of Staff Recommendations

- Continuing from the previous slide:
  - reflect the USACE hydraulic screening practices, and to provide more clarity and specificity on design floods, design flood planes, and hydraulic impact analysis
  - consider revisions to the Board's Variance process to bring it up to date and consistent with the proposed updates to the technical standards (Article 8)
  - consider revisions to the Board's Variance process to allow the Board to grant variances to other sections of the regulations as required
  - leave changes to Section 131, Vegetation tabled at this time, and

Summary of Staff Recommendations

- To ensure timely delivery of the Track 3 updates along with any amendments directed herein:
  - direct staff to work with Board Members Suarez and Macdonald to defer any of the above recommended changes, or portions thereof, if it is determined that they would require significant additional work demands resulting in delaying delivery of a Final Administrative Draft to the Board by the end of the March 2015.

8 Track Program Schedule (with proposed updates)



QUESTIONS

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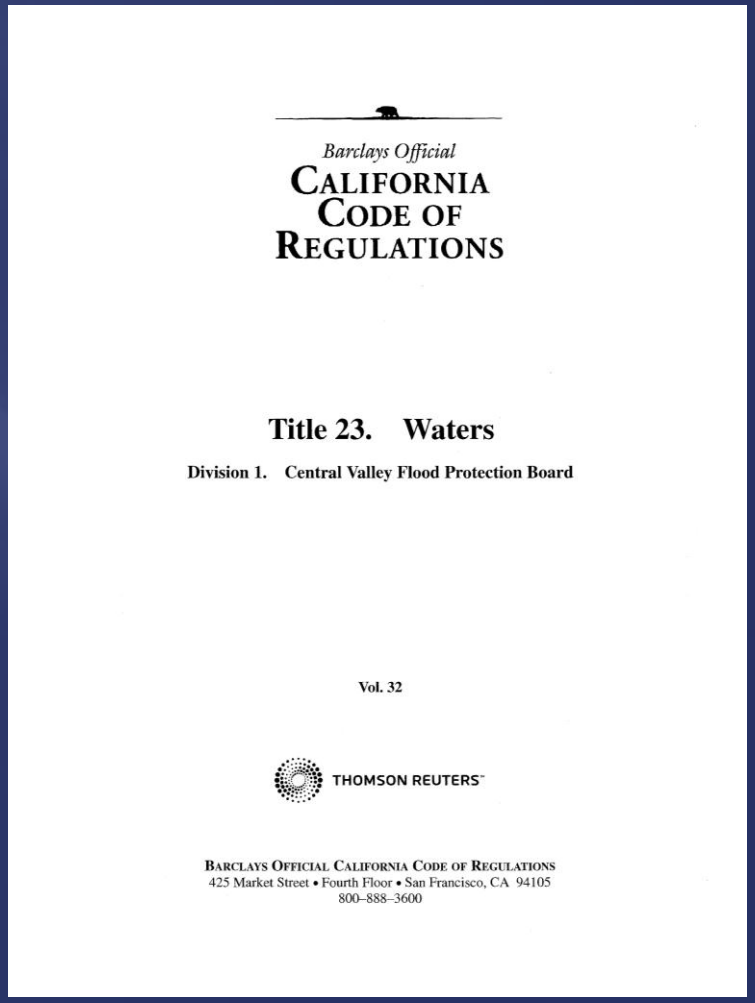

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CALIFORNIA CODE OF REGULATIONS

Title 23. Waters

Division 1. Central Valley Flood Protection Board

Vol. 32

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