

State of California
DEPARTMENT OF WATER RESOURCES

Notice of Public Availability of Modified Text and Availability of Additional Documents and/or Information

NOTICE OF 15-DAY PUBLIC COMMENT PERIOD FOR MODIFIED TEXT FOR THE REGULATORY PROPOSAL TO IMPLEMENT STANDARDS FOR ENCROACHMENT PERMITS TO PROVIDE ACCESS TO THE STATE WATER PROJECT RIGHT-OF WAY AND ENFORCE THE DEPARTMENT'S STATUTORY AUTHORITY TO REMOVE ENCROACHMENTS

Public Availability Date: February 21, 2014
Deadline for Public Comment: March 10, 2014

Following its December 7, 2013, public hearing, the Department of Water Resources (DWR) made changes to the proposed California Code of Regulations, title 23, sections 600 through 630, which set forth standards for the issuance of an Encroachment Permit for access to the State Water Project (SWP) right-of-way and implement the Department's statutory authority to remove encroachments. At the January 15, 2014, meeting of the California Water Commission, the proposal to implement the changes was approved as an Action Item after making them available to the public for comment for a period of at least fifteen days. The Commission further provided that the Department shall consider such written comments as may be submitted during this period, shall make such modifications as may be appropriate in light of the comments received, and shall present the regulations to the Commission for further consideration if warranted.

All regulatory documents for this rulemaking are available online at the following DWR website: <http://www.water.ca.gov/regulations/>. The full text, including changes and modifications, is available at this website as well.

In accordance with the Government Code, section 11346.8, the proposed regulatory language is modified as follows:

Summary of Proposed Modifications

1. Adding new section 608.3. Department Consent Required for Sale or Transfer of Encroachment Permit Interest. Duty to Notify Department.

Permittee shall provide written notice to the Department in the event of a sale or transfer of the Permittee's interest in property that is the subject of an Encroachment Permit. The right or interest included in an Encroachment Permit shall not pass by sale, transfer, assignment, or succession without written consent by the Department. Failure to notify

the Department of the transfer will terminate the right or interest conferred by the Encroachment Permit, at which time the Department may take action to remove the encroachment as authorized by law and set forth in these Regulations.

Note: Authority: Section 12899.9, Water Code

Reference: Sections 12899.2 (b), 12899.2(c) & 12899.5 (b), Water Code

REASON: An Encroachment Permit is revocable at the discretion of the department. No matter what the mechanism is for transfer of the permitted interest, the department must be notified. Failure of the Permittee to provide this notice impairs the ability to effectively manage the area of the encroachment. In many instances where notice was not provided, staff consumed significant time attempting to locate the owner, without success, leaving a stranded encroachment that interferes with access, operations, or maintenance of the SWP. It is important to maintain up to date and accurate records of current ownership of the property included in the EP. This is a critical element, in the event the department is required to take action in the area of the encroachment. In addition, with a sale, transfer, dedication to and/or acceptance for operation and maintenance by a successor in interest, the department must ensure acceptance of and continued compliance with all the terms and conditions of the permit. If the department is unable to determine the identity of the owner, it will consider the encroachment abandoned and unauthorized and take action to remove it as authorized by law and these Regulations.

In addition to the modifications described above, various changes to the regulatory text have been made to improve clarity:

2. Addition to Section 602: Any person proposing an encroachment or any person who, as of the effective date of these regulations, has a non-permitted encroachment within the right-of-way acquired for the State Water Project, shall submit an application as found in Article 5, Section 610.1 of these regulations. This requirement shall not apply to any person that is exempt from permitting under Article 3, section 607 of these regulations or possesses an encroachment permit for authorized encroachments as provided under Article 3, section 607 of these regulations.

3. Addition/deletion to Section 603.5: In accordance with Article 5, section 618 of these regulations, the Department may **summarily** deny an application if the Department determines that the proposed use may pose a threat to the physical integrity of the State Water Project or could interfere with the Department's rights with regard to access, inspection, repair, or the operation and maintenance of any State Water Project facility.

4. In section 607.1 for those with a pre-existing exemption: a non-substantive change in the wording from "**requesting the exemption**" to "asserting the exemption";

5. Additions to section 610.1:

- a. (a)(3)(E): Description and nature of proposed or existing encroachment, as-well-as its potential effect upon any State Water Project facilities, if any.
- b. (a)(3)(F): For a proposed encroachment, the estimated start and completion dates.

6. Sections 610.1 and 618.4: non-substantive changes to make all references to plan submittal consistent throughout the regulations.

7. Section 612.63, Subsection (c): delete the entire section and add the following:

- a) Pipelines carrying hazardous material or pollutants (oils, gasoline, sewage, contaminated waters, non-potable waters, etc.) shall be placed within a casing pipe throughout the SWP right of way. Pipelines transporting potable water or dry utilities do not require casing pipe except as identified in Section 612.63 (b) of these regulations.
- b) Pipelines attached to a bridge or an overchute shall be placed within a casing pipe through the aqueduct embankment and protective dikes.
- c) The applicant shall provide a 5/16-inch minimum thickness steel casing pipe, capable of containing 125% of the largest internal pressure of any carrier pipe within it. When the pipeline will not be excavated and is located a minimum of twenty-five (25) feet below SWP facilities, high density polyethylene (HDPE) may be used as the casing pipe material. The inside diameter of the casing pipe shall be a minimum of 4 inches larger than the maximum outside joint diameter of the carrier pipe. Unless the applicant receives prior approval from the Department, casing spacers will be required for all casing pipe applications. The ends of casing pipes shall be sealed with casing end seals (LINK SEAL or an equivalent approved by the Department). The casing shall be leak tested in the presence of a departmental inspector to verify that it is sealed. For information about Cathodic Protection Requirements for casing pipe, see Section 615, Article 7 of these regulations.
- d) Mortar-coated steel pipe without Cathodic protection can be used only in benign soil environments, soil environment which shall only be determined by the Department, with soil corrosivity analysis provided by the applicant.
- e) The sleeve or casing for pipelines buried beneath the primary and secondary operating roads along the open canal embankments shall be fully concrete encased through the canal embankments, unless stamped engineering calculations verifying encasement is not required are submitted to, and approved by, the Department.
- f) A minimum two (2)-inch inner diameter drain line shall be provided at the low end of the casing pipe and drain away from the aqueduct. The drain line shall terminate in a

valve protected from vandalism and the drain valve shall be maintained in the open position. A three (3)-inch galvanized steel guard post (Schedule 80 or better) shall be installed adjacent to each drain line. The posts shall extend five (5) feet above the ground and eighteen (18) inches below ground. The bottom of the posts shall be embedded in at least one (1) cubic foot of concrete. A sign shall be installed containing the name of the owner/operator, contents of the pipeline, utility identification, and emergency contact telephone number.

- g) Thermal elongation of the casing is a concern for utilities being attached to bridges or overchutes. Flexible single and expansion type coupling (such as Smith Blair Type 611 or Dresser Style 63, or equivalent) for the casing should be utilized to account for differential temperature range of 140 degrees Fahrenheit. The casing shall be mounted to the bridge or overchute by placing Teflon pads around the casing between the wall hanger brackets and U-bolts. The U-bolts should be installed with lock nuts at the top of the bracket and below the top angle and tightened to a point that still movement.

8. Section 612.72:

Subsection (a): Add "be in compliance with or exceed".

Subsection (b)(1) and (b)(2): add "from the lowest sag point of the electric conductor or communication line".

Subsection (d): Add "For overhead electric conductor lines, a . . .".

9. Section 625.2, Subsection (c): add "including a registered agent designated with the California Secretary of State".

Comments and Suggestions

Written comments will only be accepted on the modifications identified in this notice. E-mail comments as attachments in either Microsoft Word format (.doc) or Adobe Acrobat portable document format (.pdf) to: epregs@water.ca.gov . All written comments sent by mail must indicate **Encroachment Permit Regulations** in the subject line or they may not be appropriately routed to the reviewers.

Postal mail:

California Department of Water Resources

Encroachment Permit Regulations

SWP Encroachment Section

1416 Ninth Street, Room 649-2_

Sacramento, CA 95814

Attn: Leroy Ellinghouse

Electronic submittal: epregs@water.ca.gov

Please note that your written comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request.

In order to be considered, comments must be directed to DWR in one of the two forms described above and received by DWR by 5:00 p.m. on the deadline date for public comment listed at the beginning of this notice. Only comments relating to the above-described modifications to the text of the regulations and additional documents will be considered.

If you need this document in an alternate format or another language, please contact the following individuals no later than five (5) business days from the release date of this notice:

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