

Executive Summary:  
Proposed Regulations on State Water Project Encroachments  
Pursuant to Water Code 12899

### History

Although the Department of Water Resources (DWR) has been managing encroachments over the State Water Project (SWP) since the SWP's inception, legislation and subsequent regulations have not been adopted that specifically authorize DWR to condition encroachments and remove those that are unauthorized.

- Until 2005, DWR relied on its general authority to operate the SWP under Water Code Section 11451 to allow encroachments.
- In 2005, DWR sponsored legislation (SB 543, Margett) that was signed by the Governor and codified at Water Code Section 12899. The new statute provided for the establishment of a comprehensive encroachment permitting program.
- These regulations would establish the specifics of that program, detailing the way individuals may use the SWP right-of-way for activities that are not inconsistent with the ongoing operation and maintenance of the SWP.
- DWR's Operations and Maintenance Division (O&M) staff have performed inspections over all SWP right-of-way where underground pipeline exists. The inspections have focused on right-of-way where the SWP pipeline exists, recognizing the aging of the pipeline system and the potential for catastrophic damage should there be a failure of the pipeline.
- Where unauthorized encroachments have been found and determined to be a threat to the integrity of the SWP pipeline, DWR contacted the owners of the encroachment and, in most cases, the unauthorized encroachment was removed without incident.

### Current Status

DWR staff has prepared a proposed rulemaking package which includes:

- An Initial Statement of Reasons.
- Proposed Regulations for authorized encroachments and the abatement (removal) of unauthorized encroachments.
- Language of Water Code Sections 12899 through 12899.11.

The draft encroachment regulations have received recommendation from the DWR Director and the California Water Commission.

### Next Steps

- Route Fiscal Impact Statement (Form 399) to Resources Agency for approval and return to DWR.
- Forward Form 399 to Department of Finance for approval.
- Transmit entire rulemaking package to Agency for Secretary signature on Regulations Submittal Form (Form 400).
- Transmit entire rulemaking package to the Office of Administrative Law (OAL).
- Conduct a public hearing on the proposed regulations during the initial 45-day notice period after the rulemaking package has been accepted by OAL.
- Prepare Final Statement of Reasons and revise regulations as required by OAL. DWR has 1 year to complete the revisions and conform the regulations prior to adoption.

## Plans for future Encroachment Permitting Program

- Encroachments that are unauthorized, but not a threat to the SWP, will be reviewed for potential permitting and allowed to remain only if they meet DWR standards for encroachments as defined by these regulations.
- Once regulations are adopted, DWR will begin the process of removing unauthorized encroachments that are detrimental to the SWP throughout the entirety of its right-of-way. If the encroachment is not removed after DWR has notified the owner as required by the statute, DWR will work with the Attorney General's office in exercising its rights and remedies under the statute.

## Anticipated Costs

Most elements of the Encroachment Permit Program and Unauthorized Encroachment Program are currently part of DWR's ongoing management of its right-of-way. DWR has determined that the proposed regulations will have no economic or fiscal impact on the public or state and local government entities. DWR has an existing encroachment review program and the processing of encroachment permits after adoption of the proposed regulations will be accommodated by current staffing resources.

The new law provides that those responsible for unauthorized encroachments are also responsible for the cost of removal. If upon notification to the responsible party the unauthorized encroachment is not removed, DWR may recover up to \$1,000/day including legal costs from the responsible party. Recovery of these costs could require that legal action be taken against the offender(s) which will be handled by the Attorney General's Office.

## Anticipated Public Concerns

DWR staff conducted three separate public meetings during the spring and summer of 2012 at various locations along the SWP right-of-way, including Fairfield, San Jose and San Luis Obispo. There was very little public commentary even after DWR specifically notified landowners with documented encroachments about the meetings. Based on the nominal attendance and minimal comments at those meetings, we anticipate that these regulations are non-controversial and will not generate any negative public response.