

Article 2. Applications for Construction, Enlargement, Repair, Alteration, or Removal of Dams or Reservoirs.

§ 310. Applications for Construction, ~~or~~ Enlargement, ~~Repair, Alteration, or Removal.~~

(a) This section shall apply to applications for the department's approval of plans and specifications for the construction, ~~or~~ enlargement, repair, alteration, or removal of dams and reservoirs.

~~(b) Applications for construction or enlargement of a dam and reservoir shall be made on printed forms provided by the department. The department shall also provide written instructions for completing the application.~~

~~(b)(c)~~ The amount of information required will depend on factors such as the size of the proposed dam and reservoir, the dam's downstream hazard ~~potential hazards~~, hydrology of the watershed, complexity of the site, and proximity to active faults.

~~(c)(d)~~ Plans, maps, specifications and other information required for an application shall be provided in sufficient clarity and detail to be readily interpreted and studied, and to permit an adequate evaluation of the safety of the proposed work.

~~(d)(e)~~ The department may require the filing of any information, in addition to that specified in this section which, in its opinion, it considers necessary to determine the safety of the dam and reservoir.

~~(e)(f)~~ In addition to the information required by Water Code sections 6201-6206 and 6226-6228, and subsections (b)-~~(e)~~ (d) of this section, an application shall also include the following:

(1) Evidence of water rights, as required by section 303.

(2) Information necessary to enable the department to comply with the requirements of the California Environmental Quality Act (Public Resources Code Sections 21000-21174). This information shall be either:

(A) a copy of the environmental impact report (EIR) or negative declaration prepared by a lead agency, or evidence that a lead agency is preparing or will prepare environmental documentation, or

(B) data and information necessary for the department to act as a lead agency to prepare environmental documentation, where it is required by law to do so.

(3) Where the department acts as a responsible agency, the lead agency's EIR or negative declaration must be submitted to the State Clearinghouse.

(4) The fee as required by Water Code Section 63046300, ~~as made specific by section 314 of this subchapter.~~

California Code of Regulations, Title 23, Division 2, Chapter 1

(5) For the construction or enlargement of dams that the department classifies as significant, high, or extremely high hazard potential, inundation maps and other requirements described in sections 335 to 335.20 for the dam and all critical appurtenant structures.

Note: Authority cited: Section 6078, Water Code. Reference: Reference: Sections 6075, 6200-~~6206~~6230, 6261, 6300-6305, 6355, and 6357, Water Code; and Sections 21002.1(d) and 21083, Public Resources Code.

§ 310.1. Criteria for Determining Completeness. [Repealed]

§ 310.2. Criteria for Determining Completeness. [Repealed]

§ 310.3. Determination of Completeness. [Repealed]

§ 311. Criteria for Determining Completeness.

(a) Applications will be considered complete when the department has received the completed, signed application form, the information and fee required in section 310(d)-(f) and Water Code sections 6201, 6202, 6205, and 6206, 6226, 6227, and 6228~~and section 310(d)-(f)~~, and the fee required by sections 6300-6302~~6304~~ of the Water Code.

(b) The department on its own motion may waive any information required for a complete application, including but not limited to the requirements of section 303 where it determines that it has sufficient information to commence and complete a review within applicable time limits, and that all requirements for issuance of an approval will be met within such time limits.

(c) The requirements published by the department pursuant to section 310(c) shall set forth the procedures that the department will follow to review an application.

(d) Failure to comply with a request for information pursuant to such procedures within a reasonable time and in a reasonably responsive manner shall be cause for the department to disapprove the application.

Note: Authority cited: Section 6078, Water Code. Reference: Section 65941, Government Code.

§ 312. Standard Terms.

(a) The following are standard terms and conditions included in any approval of a dam safety application:

(1) Construction work shall be started within one year from date of approval.

(2) No foundations or abutments shall be covered by the material of the dam until the department has been given an opportunity to inspect and approve the same.

(b) General Safety Requirement. In addition to the above terms and conditions, the law requires that a dam shall at all times be designed, constructed, operated and maintained so that it shall not or would not constitute a danger to life or property, and the department may, at any time, exercise any discretion with which it is vested, or take any action necessary to prevent such danger.

California Code of Regulations, Title 23, Division 2, Chapter 1

Note: Authority cited: Section 6078, Water Code. Reference: Sections 6075 and 6260-6267, Water Code.

§ 313. Automatic Approval of Applications.

Applications approved in accordance with Government Code section 65956 shall contain the terms and conditions set forth in section 311. Such approvals may be revoked or modified at any time and under any conditions which would apply to any other approval granted under Division 3, Part 1 of the Water Code.

Note: Authority cited: Section 6078, Water Code. Reference: Section 65956, Government Code; and Sections 6260-6267, Water Code.

~~§ 314. Filing Fee.~~

~~(a) Amount of Fee. The estimated cost of the dam and reservoir or enlargement as specified in section 6302 of the Water Code shall include engineering, geologic, surveying, construction supervision, and administrative costs.~~

~~*Note: Authority cited: Section 21082, Public Resources Code; Section 6078, Water Code. Reference: Section 21089, Public Resources Code; Sections 6301-6305, Water Code.*~~

§ 314. Remedy of Unlawful Dams.

(a) Where the department identifies a dam or reservoir that was constructed without the department's approval, in accordance with Division 3, Part 1 of the Water Code, the department shall notify the owner of the unlawfully constructed dam or reservoir in writing and require the owner to select and complete one of the following options to remedy the dam or reservoir's unlawful status:

(1) Obtain a certificate of approval from the department, in accordance with Water Code, Division 3, Part 1. As part of the process to obtain a certificate of approval, the owner must file an application with the department for the construction of a new dam or reservoir. This application must also include any modifications required by the department to make the dam or reservoir safe for continued operation. The associated application filing fee is based on the actual cost to construct the unlawful dam, except as provided in Water Code section 6470, and the estimated cost of any required modifications. Compliance with section 303 is not required to abate a dam's unlawful status.

(2) Modify the dam to less than jurisdictional size as defined in Sections 6002 and 6003 of the Water Code. The owner must file an application with the department for the alteration of a dam or reservoir to modify the dam to less than jurisdictional size. The associated application filing fee is based on the estimated costs associated with modifications required to alter the dam or reservoir to less than jurisdictional size.

California Code of Regulations, Title 23, Division 2, Chapter 1

(3) Remove the dam. The owner must file an application for the removal of a dam or reservoir with the department. The associated application filing fee is based on costs associated with removing the dam or reservoir.

(b) All applications and filing fees, as set forth within subdivision (a), shall be submitted to the department in accordance with the requirements set forth in Water Code, Division 3, Part 1 and California Code of Regulations, Title 23, Division 2, Chapter 1.

(c) The owner must notify the department in writing of the owner's selected option, within sixty (60) calendar days of the date the notice in subdivision (a) was mailed to the owner.

(d) The owner of the unlawful dam or reservoir shall file a complete application for their selected alternative within one (1) year of notifying the department of their selected alternative.

(e) Notwithstanding subdivisions (a)-(d) or the owner's compliance with this section, the department may: issue directives or orders for dam safety remedial actions or emergency work, pursue administrative enforcement, or pursue judicial remedies. Owners who comply with this section may still be subject to administrative enforcement and judicial remedies for previous and continuing non-compliance with requirements set forth in Water Code, Division 3, Part 1 and California Code of Regulations, Title 23, Division 2, Chapter 1.

Note: Authority cited: Section 6078, Water Code. Reference: Sections 6077, 6200-6267, 6300-6305, 6425-6433, and 6470, Water Code.

Article 5. Dams Owned by the Department of Water Resources

§ 330. Consulting Board.

Pursuant to Section 6056 of the Water Code, the department shall retain a board of three consultants to report to the Director on the Safety of Dams owned by the department.

Note: Authority cited: Section 6078, Water Code. Reference: Section 6056, Water Code.

§ 331. Scope of Review.

The consulting board shall make independent findings with regard to conditions which may affect the safety of the dam and reservoir as specified in Section 6081 of the Water Code, and the board shall also make independent findings that the dam is safe to impound water, as specified in Section 6355 of the Water Code.

Note: Authority cited: Section 6078, Water Code. Reference: Sections 6056, 6081 and 6355, Water Code.

§ 332. Actions for Which Board Is Retained.

(a) The department shall retain a consulting board:

(1) To review the adequacy of the design of a dam and reservoir the department proposes to construct, or

(2) To review the safety of the completed construction and the terms and conditions to be included in a certificate of approval for any dam owned by the department as issued, renewed or modified, no later than six months following any such action.

(b) Where a board is retained to review the adequacy of the design of a dam and reservoir, it shall report its findings to the Director prior to the approval of an application to construct or enlarge the dam.

Note: Authority cited: Section 6078, Water Code. Reference: Section 6056, Water Code.

§ 333. Periodic Review.

In addition to the times specified in Section 332, the department shall retain a review board at least once every five years to make independent findings that the dam is safe to continue impounding water, in accordance with its certificate of approval issued under section 6355 of the Water Code. ~~review the operational performance of department owned dams. The Federal Power Commission's Federal Energy Regulatory Commission's five year independent review may not be substituted if it is comparable to the review required by~~ to fulfill the requirements set forth in this article.

Note: Authority cited: Section 6078, Water Code. Reference: Sections 6056 and 6355, Water Code.

California Code of Regulations, Title 23, Division 2, Chapter 1

§ 334. Costs Related to Director's Safety Review Boards

(a) The department's State Water Project shall be responsible for all costs associated with retaining the boards under this Article.

(b) The department's State Water Project shall reimburse the Division of Safety of Dams for all costs incurred in preparing for and participating in boards retained under this Article by June 30 of each fiscal year in which costs were incurred.

Note: Authority cited: Section 6078, Water Code. Reference: Section 6056, Water Code.

Article 6. Inundation Maps

§ 335. Scope and Applicability of Regulations

(a) Owners of state jurisdictional dams, except dams classified by the department as low hazard, shall prepare inundation maps for their dams and critical appurtenant structures. Dam owners are responsible for preparing and submitting these documents to the department as described in this article. Approved inundation maps are used to support emergency action plans that dam owners are required to prepare pursuant to section 6161 of the Water Code.

(b) The provisions of this article apply to all owners of state jurisdictional dams except dams classified by the department as low hazard, including those regulated pursuant to Title 18, Code of Federal Regulations, Part 12.

Note: Authority cited: Sections 6078 and 6162, Water Code. Reference: Sections 6002, 6160 and 6161, Water Code; and Title 18, Code of Federal Regulations, Part 12.

§ 335.2. Definitions

(a) Unless the context clearly requires otherwise, as used in this article, the terms below shall have the meanings noted:

(1) “Breach” refers to an opening through a dam or critical appurtenant structure.

(2) “Breach height” refers to the vertical distance of the dam or critical appurtenant structure that must be breached in the model. The breach height of a dam shall be measured from the upstream toe or downstream toe, whichever elevation is higher, to the maximum possible storage elevation. The breach height of a critical appurtenant structure is its height, as defined in section 335.2(a)(3)(B).

(3) “Critical appurtenant structure” refers to a barrier or hydraulic control structure that impounds the same reservoir as the dam and is 25 feet or more in height, impounds a minimum of 5,000 acre-feet of water at the maximum possible storage elevation, or that the department determines poses a significant or higher downstream hazard potential per section 335.4(a). Typical critical appurtenant structures include emergency spillways, gated spillways, and saddle dams.

(A) A critical appurtenant structure may contain multiple water barriers, including but not limited to gates, flashboards, and concrete monoliths.

(B) The height of a critical appurtenant structure shall be measured from the upstream toe or downstream toe, whichever elevation is higher, to the maximum possible storage elevation, except for the following cases:

1. For a structure comprising gates constructed on a concrete control structure, such as a spillway with multiple radial gates, its height shall be measured from the upstream toe of the concrete control structure to the maximum possible storage elevation.

California Code of Regulations, Title 23, Division 2, Chapter 1

2. If gates are affixed to a concrete dam, the height shall be measured from the base of the gates to the maximum possible storage elevation.

(C) A penstock or low-level outlet shall be considered a critical appurtenant structure if the department determines it poses a significant or higher downstream hazard potential, as defined in section 335.4(a).

(4) "Critical facilities" refers to law enforcement facilities, fire stations, schools, hospitals, prisons, and major roads.

(5) "Dam" has the same meaning as provided in section 6002 of the Water Code.

(6) "Dam system" refers to a dam and all critical appurtenant structures that impound the same reservoir.

(7) "Dynamic routing" refers to hydraulic flow routing based on the shallow water equations to compute changes in discharge, velocity, and stage with respect to time at various locations along a watercourse.

(8) "EAP" refers to an emergency action plan as described in section 8589.5 of the Government Code.

(9) "Failure scenario" refers to the modeled simulation of a breach of a dam or critical appurtenant structure that results in an unintended release of the impoundment.

(10) "FEMA P-946" refers to the Federal Emergency Management Agency's "Federal Guidelines for Inundation Mapping of Flood Risks Associated with Dam Incidents and Failures," dated July 2013.

(11) "Flood wave arrival time" refers to the elapsed time from the initiation of the failure scenario until the arrival of the leading edge of the flood wave.

(12) "Geospatial file" refers to a digital file containing data that is geographically referenced, typically in vector or raster format, as projected in NAD 1983 Teale (California) Albers per section 335.12(f).

(13) "Hydraulic model" refers to a computer model used to simulate the spatial and temporal changes of water depth and velocity conveyed through a watercourse.

(14) "Hydrograph" refers to a graphical representation of flow as a function of time.

(15) "Inundation area" refers to the area downstream of the dam or critical appurtenant structure that would experience a rise of one foot or greater in water surface elevation as the result of a failure scenario.

(16) "Inundation boundary" refers to the perimeter of the inundation area.

(17) "Inundation map" refers to a map showing the impacts of a failure scenario, such as where and when flooding would occur, and may contain multiple sheets.

California Code of Regulations, Title 23, Division 2, Chapter 1

(18) "Inundation map sheet" refers to a page in an inundation map.

(19) "Maximum possible storage elevation" refers to the maximum reservoir elevation to which water can be physically impounded without spilling. In most cases, this is the certified storage elevation. When a reservoir is restricted below the spillway, this is the elevation of the spillway crest.

(20) "NAVD88" refers to the North American Vertical Datum of 1988 computed by the National Geodetic Survey.

(21) "Owner" has the same meaning as provided in section 6005 of the Water Code.

(22) "PDF" refers to a portable document format file.

(23) "Projection" refers to a method by which the curved surface of the Earth is portrayed onto a flat surface.

(24) "Raster" refers to a data format that represents geographic information as a grid of cells, where each cell contains a value.

(25) "Storm-induced loading condition" refers to the meteorological conditions before and during the modeled breach of the dam or critical appurtenant structure when the reservoir is at or above the maximum possible storage elevation and the inundation boundary is greater than that of a sunny-day loading condition due to a rain or flood event.

(26) "Sunny-day loading condition" refers to the meteorological conditions before and during the modeled breach of the dam or critical appurtenant structure at the maximum possible storage elevation with non-flood season inflow.

(27) "Toe" refers to the junction of the slope of a dam or critical appurtenant structure with the natural ground surface.

(28) "Two-dimensional hydraulic model" refers to a hydraulic model in which ~~variables~~ flow parameters such as velocity and depth vary in two horizontal directions along a watercourse.

(29) "Vector" refers to a data format that represents geographic information as point, line, or polygon features.

Note: Authority cited: Sections 6078 and 6162, Water Code. Reference: Section 8589.5, Government Code; and Sections 6002, 6002.5, 6004.5, 6005, 6007.5, 6008 and 6161, Water Code.

§ 335.4. Downstream Hazard Potential Classifications

(a) The department classifies the downstream hazard potential of all state jurisdictional dams based on a sunny-day loading condition as follows:

(1) Low Hazard Potential. No probable loss of human life and low economic and environmental losses. Losses are expected to be principally limited to the owner's property.

California Code of Regulations, Title 23, Division 2, Chapter 1

(2) Significant Hazard Potential. No probable loss of human life but can cause economic loss, environmental damage, impacts to critical facilities, or other significant impacts.

(3) High Hazard Potential. Expected to cause loss of at least one human life.

(4) Extremely High Hazard Potential. Expected to cause loss of at least one human life and one of the following:

(A) Result in an inundation area with a population of 1,000 persons or more or

(B) Result in the inundation of facilities or infrastructure, the inundation of which poses a significant threat to public safety as determined by the department on a case-by-case basis.

(b) A dam owner may request a re-evaluation of hazard potential classification in accordance with the following.

(1) If a dam owner contends that their dam should be assigned a different hazard potential classification, the dam owner may request a re-evaluation by submitting a complete request, which includes the following:

(A) A justification letter that explains why the initial classification is not applicable and the reasons that warrant a different classification based on the classification criteria contained in section 335.4(a), and

(B) Supporting documentation, which may include aerial imagery, topography data, or inundation studies.

(2) The department will complete the re-evaluation and notify the dam owner within 60 days of receiving a complete request. The department may request additional supporting documentation during its review.

(3) The existing classification assigned by the department shall remain in effect until a different classification, if any, is assigned by the department.

Note: Authority cited: Sections 6078 and 6162, Water Code. Reference: Sections 6002.5, 6009, 6160 and 6161, Water Code.

§ 335.6. Modeling Requirements

The breach of the dam and critical appurtenant structures and the subsequent downstream routing of the resulting breach hydrograph shall be modeled in accordance with the requirements of this section. Failure scenarios shall be applied separately to the dam and each critical appurtenant structure. The results of the inundation model shall be used to prepare an inundation map.

(a) Modeling Assumptions for each Failure Scenario. A sunny-day loading condition is required for the modeled breach of each dam and critical appurtenant structure. A storm-induced loading condition is not required, but may be submitted in lieu of a sunny-day loading condition.

California Code of Regulations, Title 23, Division 2, Chapter 1

(1) Each failure scenario shall assume the following:

(A) The reservoir is at the maximum possible storage elevation.

(B) The breach height of the dam or critical appurtenant structure as defined in section 335.2(a)(2).

(C) Any impounded sediment shall be modeled as water. In addition, a dam owner may also request to model impounded sediment as provided in section 335.6(a)(2).

(2) If a dam owner contends that impounded sediment should not be modeled as water, the dam owner may request department acceptance of a sediment release modeling approach.

(A) A request for acceptance of a sediment release modeling approach includes the following:

(i) A letter requesting department acceptance of a sediment release modeling approach, and

(ii) Data and analyses that support the requested modeling approach. This includes but is not limited to volume of impounded sediment, bathymetry data, geotechnical data from sediment samples, and proposed inundation sensitivity analyses of the sediment characteristics such as volume released and flowability.

(iii) An inundation map with any impounded sediment modeled as water.

(B) After receiving a complete request, the department may require additional information that is necessary to evaluate the request before making a determination about whether to accept a sediment release modeling approach.

(C) After reviewing the complete request and other required information, the department shall notify the dam owner of its decision to accept or not accept the sediment release modeling approach. The acceptance of a sediment release modeling approach does not constitute approval of the resulting inundation map. All inundation maps are subject to department approval based on all applicable requirements of this article. If the department approves an inundation map based on the accepted sediment modeling approach, the approved map will supersede any previously approved maps for that dam or critical appurtenant structure.

(3) Failure scenarios for dams shall comply with the following:

(A) The dam owner shall select one of the following methods that are applicable to the dam for estimating breach parameters, except breach height, prescribed in section 335.6(a)(1)(B):

1. Table 9-3 of FEMA P-946, incorporated here by reference.

2. Chapter 2, Appendix II-A, Table 1 of Federal Energy Regulatory Commission's Engineering Guidelines for the Evaluation of Hydropower Projects (August 2015), incorporated here by reference.

3. A sensitivity analysis using equations appropriate for the dam in Table 2 of U.S. Department of the Interior's DSO-98-004 Prediction of Embankment Dam Breach Parameters (July 1998), incorporated here by reference, that produces the largest peak outflow.

California Code of Regulations, Title 23, Division 2, Chapter 1

4. Upon pre-approval by the department, alternative breach parameters that fulfill the purpose of section 335.6(a)(3)(A).

(B) If the release from a failure scenario could impact separate watercourses based on the assumed failure locations, the dam sections located upstream of each respective watercourse shall be failed independently as separate failure scenarios.

(4) Failure scenarios for critical appurtenant structures shall comply with the following, as applicable:

(A) For saddle dams, failure scenarios shall be modeled as described in section 335.6(a)(3).

(B) For gated critical appurtenant structures, all gates shall be breached simultaneously together with the control structure.

(C) Multiple gates affixed to concrete dams shall be failed collectively but separately from the dam.

(D) All critical appurtenant structures, except for saddle dams, shall assume a nearly instantaneous and complete failure.

(E) For any type of critical appurtenant structure and upon pre-approval by the department, the dam owner may assume an alternative failure mode that produces the largest peak outflow, as substantiated by a sensitivity analysis.

(5) If a failure scenario is expected to cause the failure of any downstream dams or critical appurtenant structures, the failure of those downstream dams and critical appurtenant structures shall be included in the model and map.

(b) Inundation Modeling Assumptions. The inundation model shall satisfy the following requirements:

(1) The elevation data shall be appropriate for the downstream development and terrain that would potentially be impacted by the failure scenario. The horizontal resolution of the data shall be ten meters or finer.

(2) The following describes the modeling software requirements used to simulate the inundation.

(A) An unsteady hydraulic model appropriate for the downstream development and terrain shall be used. The model must be capable of performing dynamic routing to approximate the temporal and spatial changes in inundation magnitude and extent. In areas of lateral spreading, a two-dimensional hydraulic model is generally appropriate.

(B) Upon pre-approval by the department, the dam owner may submit an alternative model for review that produces the inundation extent and timing described in section 335.6(b)(2)(A).

Reference: Chapter 2 of Federal Energy Regulatory Commission's Engineering Guidelines for the Evaluation of Hydropower Projects (August 2015). FEMA P-946: Federal Guidelines for

California Code of Regulations, Title 23, Division 2, Chapter 1

Inundation Mapping of Flood Risks Associated with Dam Incidents and Failures (July 2013). U.S. Department of the Interior, Bureau of Reclamation, Dam Safety Office's DSO-98-004 Prediction of Embankment Dam Breach Parameters (July 1998). Water Code sections 6160 and 6161.

Note: Authority cited: Sections 6078 and 6162, Water Code. Reference: Sections 6160 and 6161, Water Code.

§ 335.8. Technical Memorandum

(a) A technical memorandum shall be prepared for each dam system to document the modeling used to develop inundation maps. The technical memorandum shall include the following:

(1) Name and location of the dam and critical appurtenant structures.

(2) Description of the dam, including the materials and methods of construction and a description of each critical appurtenant structure. Identify elevations of the crest, upstream, and downstream toes. Provide a description of the outlet(s), including capacity. Provide justification for appurtenances that are not considered critical appurtenant structures by the dam owner.

(3) Reservoir storage capacity curve that shows the relationship between reservoir elevation and volume from the base of the reservoir to the dam crest. Elevation shall be specified as feet above NAVD88.

(4) Brief summary of the following:

(A) Modeled failure scenario(s) for the dam system, including the scenario described in section 335.6(a)(5), if applicable. For each failure scenario, include the breach hydrograph immediately downstream of the dam or critical appurtenant structure in tabular and graphical formats.

(B) Modeling software: 1. Name 2. Reasons for its use 3. Version 4. Release date

(C) Modeling assumptions of the meteorological loading condition, type of reservoir routing, downstream roughness or other friction coefficients, and initial conditions of downstream watercourses.

(D) Breach parameters for each failure scenario submitted in tabular format. Provide an explanation for breach parameter selection.

(E) Type of terrain data used, including any modifications made to the terrain.

(F) Any sensitivity analyses of the model, including the model's response to changes made to the roughness or other friction coefficients.

(G) Modifications made to stabilize the model or accelerate its computational runtime, if applicable, and the effects such modifications have on the modeled inundation results.

(H) Determination of the inundation boundary per section 335.10(c).

California Code of Regulations, Title 23, Division 2, Chapter 1

(5) The signature, seal, and license number of the California-licensed professional civil engineer responsible for preparing the technical memorandum.

Note: Authority cited: Sections 6078 and 6162, Water Code. Reference: Sections 6160 and 6161, Water Code; and Section 6700, Business and Professions Code.

§ 335.10. Inundation Maps

(a) An inundation map shall be prepared for each failure scenario as described in section 335.6. Inundation maps must contain the following model outputs as rasters, contours, points, or cross-sections at appropriate time and space intervals displayed over current aerial imagery:

(1) Inundation boundary,

(2) Flood wave arrival time,

(3) Maximum depth, and

(4) Maximum velocity.

(b) If using a raster for items in section 335.10(a), the opacity shall be adjusted to display the underlying aerial imagery.

(c) The inundation boundary shall be displayed as a one-foot maximum depth, except where the flood wave would be confined to a channel or canyon, and where the flood wave no longer poses a threat to life or critical facilities.

(d) General information. Each inundation map sheet shall contain the following information:

(1) The name of the dam, the department's dam number, the national dam ID number, and the county in which the dam is located.

(2) The meteorological loading condition. Identify whether a sunny-day or storm-induced loading condition is depicted. If a storm-induced loading condition is depicted, note the return period of the storm or the term "Probable Maximum Flood," as applicable.

(3) Sediment. If the failure scenario depicts the effects of sediment release, note "Includes reservoir sediment release."

(4) Label identifying the dam.

(5) Symbols and a corresponding legend that identifies all critical facilities in the inundation area and within the mapped extent.

(6) Labels identifying the downstream channels and flood control features within the inundation area, such as dams, levees, canals, rivers, streams, bypasses, weirs, pumps, and control structures.

(7) Boundary delineations identifying the city, county, or other governmental agency jurisdictional boundaries affected by the inundation area.

(8) An arrow indicating north.

California Code of Regulations, Title 23, Division 2, Chapter 1

- (9) An appropriate scale bar and the stated map scale.
- (10) Vertical elevation datum specified as feet above NAVD88.
- (11) If applicable, an index showing the relationship of the map sheet to the other map sheets.
- (12) The preparation date of the map.
- (13) The simulation date of the model.
- (14) The signature, seal, and license number of the California-licensed professional civil engineer responsible for preparing the map.
- (15) A statement that includes:
 - (A) The information shown is approximate and should be used as a guideline for emergency preparation and response.
 - (B) Security-sensitive infrastructure may not be shown on this map.
- (16) For flood waves that are confined within a channel but not shown within the inundation boundary as allowed by section 335.10(c), a statement indicating high flows may continue beyond the inundation boundary.
- (17) Labels identifying low-lying areas where the flood recession is expected to be slow and affect lives or critical facilities.
- (e) Map Layout. All inundation maps shall be prepared at a scale and quality that enables a person familiar with the area to clearly comprehend an aerial view of the extent of flooding. A map scale such as that described in Section 11.3.3 of FEMA P-946 may be applied.

Note: Note: Authority cited: Sections 6078 and 6162, Water Code. Reference: Section 8589.5, Government Code; Sections 6160 and 6161, Water Code; and Section 6700, Business and Professions Code.

§ 335.12. Reporting Standards

All submittals under section 335.14 shall utilize the following standards and conventions, unless otherwise specifically indicated in this article:

- (a) Reservoir storage and other water volumes shall be reported in acre-feet.
- (b) Water flow rate shall be reported in cubic feet per second.
- (c) Velocity shall be reported in feet per second.
- (d) Depth shall be reported in feet.
- (e) Time shall be reported in minutes, hours, or both.
- (f) Elevation shall be reported in feet above NAVD88.

California Code of Regulations, Title 23, Division 2, Chapter 1

(g) Geospatial files shall be projected in NAD 1983 Teale (California) Albers projection, with the units specified in feet, and verified by the engineer. The parameters of the projection are as follows:

- (1) False Easting: 0.0
 - (2) False Northing: -4000000.0
 - (3) Central Meridian: -120.0
 - (4) Standard Parallel 1: 34.0
 - (5) Standard Parallel 2: 40.5
 - (6) Latitude of Origin: 0.0
 - (7) Linear Unit: Foot US (0.3048006096012192)
- (h) Rasters shall be submitted in Tagged Image File (TIF) format.
- (i) Vectors shall be submitted in either of the following formats:
- (1) Shapefile or
 - (2) A feature class in a file geodatabase.
- (j) Geospatial files shall identify the meteorological loading condition, which is either sunny day or storm-induced including storm frequency.
- (k) Dates shall be reported as month, day, and year.

Note: Authority cited: Sections 6078 and 6162, Water Code. Reference: Section 6161, Water Code.

§ 335.14. Submittals to the Department

- (a) The dam owner shall submit the following digital files for each failure scenario:
- (1) A color PDF of each inundation map.
 - (2) Geospatial files for the inundation boundary, flood wave arrival time, maximum depth, and maximum velocity, together with the projection information in Section 335.12(g). For inundation maps developed using a two-dimensional hydraulic model, the file format of the flood wave arrival time, maximum depth, and maximum velocity shall be raster files.
- (b) The dam owner shall submit ~~one hard copy and~~ one PDF copy of the technical memorandum.
- (c) Upon the request of the department, the dam owner shall submit a digital copy of the model and other information the department needs to complete its review of the inundation map and supporting documentation.

Note: Authority cited: Sections 6078 and 6162, Water Code. Reference: Section 6161, Water Code.

California Code of Regulations, Title 23, Division 2, Chapter 1

§ 335.16. Updates to Inundation Maps and Supporting Documentation

(a) The dam owner shall update all inundation map(s) at least every 10 years from the map preparation date of the dam, and sooner under conditions that include, but are not limited to, the following:

(1) Anytime there is a significant change to the dam or critical appurtenant structure, or

(2) Anytime there is a significant change to downstream development or terrain.

(b) When an inundation map is being updated for its 10-year cycle, a new model simulation may not be required.

(1) If all the following conditions are met, a new model simulation is not required:

(A) No significant change to the dam or critical appurtenant structures,

(B) No significant change to downstream development or terrain,

(C) No significant changes to model assumptions, and

(D) No significant changes to inundation modeling state-of-practice.

(2) If a new model simulation is not performed for a 10-year map update, the dam owner shall submit the following:

(A) Updated map(s) with updated aerial imagery, critical facilities, map preparation date, the California-licensed professional civil engineer's seal, along with all map requirements in section 335.10.

(B) A written explanation of why a new model simulation is not required, as described in section 335.16(b)(1), and all changes made to update the inundation map(s).

(c) A new model simulation must be performed if there is a significant change to the dam, critical appurtenant structures, downstream development or terrain, model assumptions, or inundation modeling state-of-practice. In this case, the dam owner shall submit the map(s), geospatial files, and technical memorandum per section 335.14. The technical memorandum must include a description of all changes to the model and map(s).

Note: Authority cited: Sections 6078 and 6162, Water Code. Reference: Sections 6006, 6007 and 6161, Water Code; and Section 6700, Business and Professions Code.

§ 335.18. Department Review and Approval

Upon receipt of a complete submittal pursuant to section 335.14, the department shall evaluate it for consistency with the requirements of this article. The department shall provide comments to the dam owner and an opportunity to correct deficiencies and provide further explanation. The department may approve inundation maps upon a demonstration of compliance with Water Code sections 6160 and 6161 and substantial compliance with this article. Substantial compliance means that the submittals were made in a good faith attempt to

California Code of Regulations, Title 23, Division 2, Chapter 1

conform to requirements in this article and other applicable law, and the department determines that the submittal is sufficient in view of the particular circumstances to fulfill the purpose of the requirements. Upon approval of the inundation maps, the department will provide written notification to the dam owner.

Note: Authority cited: Sections 6078 and 6162, Water Code. Reference: Section 8589.5, Government Code; and Sections 6161 and 6431, Water Code.

§ 335.20. Inundation Map and EAP Requirements for New and Enlarged Dams

The following shall apply to new or enlarged dams and their critical appurtenant structures that the department classifies as significant, high, or extremely high hazard potential:

(a) Inundation maps and the submittals required by section 335.14 shall be submitted before department approval of any construction or enlargement application, pursuant to section 310.

(b) A Certificate of Approval authorizing storage to the elevation requested in the application shall not be issued until the inundation map(s) are approved by the department pursuant to section 335.18 and the dam owner has submitted an EAP pursuant to Government Code section 8589.5.

Note: Authority cited: Sections 6078 and 6162, Water Code. Reference: Sections 6075, 6160, 6161, 6202, 6205, 6206, 6261, 6355 and 6357, Water Code; and Section 8589.5, Government Code.

Article 7. Enforcement

Article 7. Administrative Enforcement

§ 337. Purpose and Authority.

The department is responsible for implementing California's Dam Safety Program pursuant to the Water Code, Division 3, Part 1. In the event of a violation of Water Code, Division 3, Part 1, implementing regulations, or any department approvals, orders, or requirements issued under Water Code, Division 3, Part 1, the department may initiate proceedings to obtain compliance. With respect to enforcement actions to ensure compliance with Water Code, Division 3, Part 1, Chapter 4, Article 6, the department will coordinate with Cal OES. The regulations in this article specify the process for administrative enforcement actions that the department may take to ensure compliance with Water Code, Division 3, Part 1 and implementing regulations. The process established in this article does not limit the department's ability to issue directives or orders for dam safety remedial actions or emergency work or to pursue judicial remedies.

Authority cited: Section 6078, Water Code.

Reference: Sections 6075, 6077, 6079, 6100, 6160, 6161, 6429, 6431 and 6432, Water Code.

§ 337.2. Definitions.

Unless the context clearly indicates otherwise, as used in this article and Article 7.1, the terms below shall have the meanings noted:

(a) "ALJ" means Administrative Law Judge.

(b) "Cal OES" means the California Governor's Office of Emergency Services.

(c) "Dam owner" has the same meaning as "Owner" provided in section 6005 of the Water Code.

(d) "Dam Safety Program" means the department's program to regulate and supervise the safety of dams under Water Code, Division 3, Part 1 and implementing regulations.

(e) "Dam Safety Program requirements" means any requirement imposed by Water Code, Division 3, Part 1 or implementing regulations, or any approval, order, or requirement issued under Water Code, Division 3, Part 1 or implementing regulations.

(f) "Department" means the California Department of Water Resources.

(g) "DSOD" means the department's Division of Safety of Dams.

California Code of Regulations, Title 23, Division 2, Chapter 1

(h) "EAP" means an emergency action plan as described in section 8589.5 of the Government Code and includes updates to an EAP as required by Water Code section 6161.

(i) "Interested person" means any person that has an interest in the safety of a particular dam or dam safety in general.

(j) "Inundation map" means an inundation map as described in Water Code section 6161 and California Code of Regulations, Title 23, section 335.2(a)(17), and updates to an inundation map as required by Water Code section 6161 and California Code of Regulations, Title 23, section 335.16.

(k) "OAH" means the Office of Administrative Hearings of the Department of General Services.

(l) "Parties" means the owner of the dam that is the subject of the action, DSOD and Cal OES, with respect to actions to ensure compliance with Water Code, Division 3, Part 1, Chapter 4, Article 6.

(m) "Period of Violation" is the number of calendar days, as determined by the department, that

a dam owner is in violation of Water Code, Division 3, Part 1, implementing regulations, or any department approvals, orders, or requirements issued under Water Code, Division 3, Part 1.

(n) "Presiding officer" means an impartial person designated by the department to conduct the hearing under this article, including an Administrative Law Judge assigned by OAH.

(o) "Reservoir restrictions" means restricting the level of water storage in reservoirs as a punitive action, as authorized under Water Code section 6429, and does not include reservoir restrictions that are directed by the department or undertaken voluntarily by a dam owner primarily as a means of risk reduction.

Authority cited: Section 6078, Water Code.

Reference: Sections 6005, 6160, 6161, 6357 and 6429, Water Code.

§ 337.4. Notice of Violation.

If DSOD determines that a dam owner has violated the Water Code, Division 3, Part 1, implementing regulations, or any approval, order, or requirement issued under Water Code, Division 3, Part 1 or implementing regulations, then DSOD may issue a Notice of Violation to the dam owner. In determining whether to issue a Notice of Violation, DSOD will consider the nature of the violation, potential threat to life and property posed by the violation, and the number of violations that would be included in a Notice of Violation. The Notice of Violation

California Code of Regulations, Title 23, Division 2, Chapter 1

shall: describe the activity or failure to act that constitutes a violation and actions that the dam owner is required to undertake to remedy the violation, provide the dam owner with the opportunity to submit information to DSOD concerning the violation, and provide notice that failure to take the required action(s) within the specified time period may result in the issuance of an administrative complaint as described in section 337.8. If the dam owner has failed to comply with a department order to prepare and submit an acceptable EAP in accordance with Water Code, Division 3, Part 1, Chapter 4, Article 6, the Notice of Violation shall include an estimated cost to prepare an EAP and inundation map(s).

Authority cited: Section 6078, Water Code.

Reference: Sections 6075, 6077, 6428, 6429, 6431 and 6432, Water Code.

§ 337.6. Department Preparation of an Emergency Action Plan; Reimbursement by Dam Owner.

If a dam owner fails to comply with a department order to prepare and submit an acceptable EAP in accordance with Water Code, Division 3, Part 1, Chapter 4, Article 6 and as described in the Notice of Violation, the department shall prepare an EAP, including inundation maps. The department costs and expenses shall be recoverable by the state, including the department, from the dam owner.

Authority cited: Section 6078, Water Code.

Reference: Section 6431, Water Code.

§ 337.8. Administrative Complaint.

(a) If DSOD determines that a dam owner has failed to correct the violations of Dam Safety Program requirements as set forth in a Notice of Violation, DSOD may issue an administrative complaint to the dam owner. In determining whether to issue an administrative complaint, DSOD will consider the nature of the violation, potential threat to life and property posed by the violation, and the number of violations that would be included in an administrative complaint. The administrative complaint may seek administrative civil penalties, reservoir restrictions, property liens, fees, penalties and interest imposed by statute, and any other actions that DSOD deems necessary to ensure compliance with Water Code, Division 3, Part 1 and implementing regulations. The administrative complaint shall also seek recovery of department costs to prepare an EAP, including inundation maps.

(b) The administrative complaint shall:

California Code of Regulations, Title 23, Division 2, Chapter 1

(1) Allege the activity or failure to act that constitutes a violation of Water Code, Division 3, Part 1, implementing regulations, or any approval, order, or requirement issued under Water Code, Division 3, Part 1 or implementing regulations.

(2) Include the provision of law authorizing the administrative civil penalty, reservoir restrictions, property liens, reimbursement of department costs to prepare EAPs and inundation maps, fees, penalties and interest imposed by statute, or other actions proposed to ensure compliance with Water Code, Division 3, Part 1 and implementing regulations.

(3) State the amount of any administrative civil penalty proposed, reservoir restrictions or property liens proposed, costs for which DSOD is seeking to recover, fees, penalties, and interest imposed by statute, as applicable, and any other actions proposed to ensure compliance with Water Code, Division 3, Part 1 and implementing regulations.

(4) State that the dam owner's failure to request a hearing in accordance with section 337.12, subsection (a), constitutes a waiver of the right to a hearing.

(5) Inform the dam owner that any request for hearing must be submitted to the department and designate the department office where the request for hearing must be sent.

(c) DSOD may, within its discretion, issue an administrative complaint without first issuing a Notice of Violation in cases where DSOD determines that issuance of a Notice of Violation would result in an unreasonable delay.

Authority cited: Section 6078, Water Code.

Reference: Sections 6075, 6077, 6357.1, 6428, 6429, 6431, and 6432, Water Code.

§ 337.10. Assessment of Administrative Civil Penalty.

(a) In determining the amount of the proposed and assessed administrative civil penalty authorized by Water Code section 6432, the department shall take into consideration the following, to the extent they are known to the department: the actual or potential harm to public safety, including life and property; the extent of deviation from applicable dam safety requirements; the amount of time over which the violation occurs; any prior history of violations; any corrective action taken and cooperation by the dam owner; the dam owner's culpability and ability to pay the penalty; and any impacts to disadvantaged communities.

(b) Except as provided in subsection (c) of this section, administrative civil penalties imposed pursuant to this article shall be assessed following the procedures set forth in Article 7.1. The penalty imposed for any violation in accordance with this article shall not exceed the maximum penalty specified in statute, which is currently expressed as a daily maximum per violation.

California Code of Regulations, Title 23, Division 2, Chapter 1

(c) Penalties set by statute will not be assessed by the procedures set forth in Article 7.1.

Authority cited: Section 6078, Water Code.

Reference: Section 6432, Water Code.

§ 337.11. Reservoir Restrictions.

(a) In determining the extent of the reservoir restrictions to be imposed pursuant to this article, the department shall consider the level of reservoir restrictions that will, as determined by the department, provide reasonable incentive for the dam owner to comply with the Dam Safety Program requirement or requirements that form the basis or bases of the reservoir restrictions, based upon particular facts and circumstances regarding the dam, the reservoir, and the dam owner.

(b) Administrative complaints issued by DSOD that propose reservoir restrictions and decisions issued by the department that impose reservoir restrictions shall include findings that identify relevant facts and circumstances and analyze the criteria in subsection (a).

Authority cited: Section 6078, Water Code.

Reference: Section 6429, Water Code.

§ 337.12. Request for Hearing; Waiver.

(a) If the dam owner chooses to contest an administrative complaint, the dam owner must submit a written request for a hearing to the department within thirty (30) calendar days of the date that DSOD served the administrative complaint. The request for hearing must be sent to the designated department office, as identified in the administrative complaint. The request must include a statement of defense, which shall include at a minimum: a summary of any legal and factual basis or bases for challenging the administrative complaint, including the underlying factual allegations and violations, and, as applicable, the amount of any administrative civil penalty, costs, and fees, penalties and interest imposed by statute, reservoir restrictions, and any other relief sought in the administrative complaint.

(b) If the dam owner fails to submit a written request for a hearing as prescribed in subsection (a), any right to a hearing will be deemed waived and the department will be authorized to issue a final decision that orders the imposition of the administrative civil penalties, reservoir restrictions, property liens, recovery of costs to prepare an EAP, including inundation maps, fees, penalties and interest imposed by statute, and other actions proposed in the administrative complaint to ensure compliance with Water Code, Division 3, Part 1. The deadline to submit the request shall be extended for at least thirty (30) calendar days for good

California Code of Regulations, Title 23, Division 2, Chapter 1

cause upon a written request from the dam owner or on the department's own motion, and any extensions granted by the department must be in writing.

Authority cited: Section 6078, Water Code.

Reference: Sections 6428, 6429, 6431 and 6432, Water Code.

§ 337.14. Presiding Officer; Hearing Procedure.

(a) In the case where the dam owner requests a hearing, the department shall schedule the hearing before a presiding officer who shall exercise all powers relating to the conduct of the hearing.

(b) The department may designate an ALJ from OAH to serve as a presiding officer under this section. Or, the department may designate an impartial person within the department to serve as a presiding officer under this section, but the presiding officer, and any advisors to the presiding officer, shall not be the same department person who issued the Notice of Violation or administrative complaint and shall not have served as an investigator, prosecutor, or advocate in any stage of the enforcement proceeding.

(c) In the cases where the department designates an ALJ from OAH to serve as the presiding officer, the hearing shall be conducted and the decision shall be issued in accordance with Chapter 4.5 (commencing with section 11400) and Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. In accordance with Government Code section 11445.20, subdivision (c), the department may designate these cases for an informal hearing under Article 10 of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code (commencing with Government Code section 11445.10). When determining whether to designate a case for informal hearing, the department shall consider the significance and complexity of any issues in dispute and the need to create an administrative record. Any proposed and final decisions issued after a hearing authorized by this subsection may include any of the orders authorized by section 337.28, subsections (a)(1) – (a)(6).

(d) In cases where the department designates a person other than an ALJ from OAH, the requirements in sections 337.16 through 337.28 apply to the procedures by which the department conducts a hearing, except that the presiding officer may waive or modify the requirements for good cause.

(e) The designation of the presiding officer and any waiver or modifications of hearing procedures or requirements authorized under subsection (d) shall be made in full consideration of the requirements of due process and fundamental fairness to the parties.

Authority cited: Section 6078, Water Code.

California Code of Regulations, Title 23, Division 2, Chapter 1

Reference: Sections 6428, 6429, 6431 and 6432, Water Code.

§ 337.16. Notice of Hearing (Non-OAH Cases).

(a) In cases where a department official serves as the presiding officer, the department shall schedule a hearing on the merits of the case and provide notice to the ~~dam owner~~ parties as set forth in this section or section 337.17. Hearings under this section will be conducted in Sacramento, unless the dam owner provides the presiding officer good cause, in writing, to schedule the hearing at an alternate location in California, ~~or to schedule a virtual hearing,~~ or to schedule a written hearing under section 337.17. The presiding officer may decide, for good cause, to schedule the hearing at a location other than Sacramento or to conduct a virtual hearing, or to schedule a written hearing under section 337.17.

(b) The department shall serve a notice of hearing to the dam owner at least thirty (30) calendar days prior to the hearing, except as provided in subsection (c).

(c) If the department determines that the provision of a 30-day notice poses an unreasonable risk to public safety or welfare, the department may provide a shorter notice period, but in all cases the original notice of hearing must provide a minimum of ten (10) calendar days' notice prior to the hearing.

(d) The notice of hearing shall include the following:

(1) The date, time, and place at which the hearing will be held.

(2) A statement that the hearing will be governed by this article.

(3) A statement that if the dam owner does not proficiently speak or understand English, the dam owner may request language assistance by contacting the department within a reasonable amount of time prior to the hearing to allow appropriate arrangements to be made. For notices issued under subsection (b), the dam owner must make the request for assistance at least fifteen (15) calendar days before the hearing, and for notices issued under subsection (c), the dam owner must make the request for assistance at least five (5) calendar days before the hearing. The presiding officer may direct the department or the dam owner to pay for the costs of the interpreter. The presiding officer's decision to direct payment shall be based upon an equitable consideration of all the circumstances in each case, such as the ability of the dam owner to pay for the costs of the interpreter.

(4) A copy of the administrative complaint.

California Code of Regulations, Title 23, Division 2, Chapter 1

(5) A statement regarding whether the pre-submittal of materials will be required, as described in section 337.20, subsection (b), and if so, a description of the pre-submittal requirements.

(e) In the case where a dam owner submits a timely request for a hearing, and a hearing is scheduled, a dam owner's failure to appear at the time and place of the hearing constitutes a waiver of the request for hearing and the department will be authorized to issue a final decision as described in section 337.12, subsection (b). Notwithstanding the preceding sentence, if the dam owner demonstrates that failing to appear at the scheduled hearing was due to circumstances beyond the dam owner's reasonable control or otherwise demonstrates good cause for failing to appear and requests that the hearing be rescheduled, the presiding officer shall reschedule the hearing, and the department shall not issue a final decision due to the dam owner's failure to appear at the hearing initially scheduled.

Authority cited: Section 6078, Water Code.

Reference: Sections 6428, 6429, 6431 and 6432, Water Code.

§ 337.17. Notice of Written Hearings (Non-OAH Cases).

(a) In cases where a department official serves as the presiding officer, the department shall schedule a hearing and provide notice to the parties as set forth in this section or section 337.16. Under this section, the presiding officer may designate a matter as a written hearing which is a hearing where the merits of a case are decided solely based on the submittals of the parties and interested persons. When determining whether to designate a case for a written hearing, the presiding officer shall consider the significance and complexity of any issues in dispute, the benefits of oral testimony and cross examination, and the requirements of due process and fundamental fairness to the parties.

(b) The department shall serve a notice of written hearing to the dam owner at least sixty (60) calendar days prior to the deadline to submit materials as set forth in the notice of hearing. The presiding officer shall cause the notice of hearing to be posted on the department's website for its Division of Safety of Dams.

(c) The notice of written hearing shall include the following:

(1) The deadlines for submittals and the address to send the submittals. When determining the submittal deadlines, the department shall consider the complexity and scope of the enforcement action.

(2) A statement that the written hearing will be governed by this article.

California Code of Regulations, Title 23, Division 2, Chapter 1

(3) A statement that if the dam owner does not proficiently speak or understand English, the dam owner may request language assistance by contacting the department within a reasonable amount of time prior to the deadline to submit materials for the written hearing to allow appropriate arrangements to be made. The dam owner must make the request for assistance at least thirty (30) calendar days before the deadline to submit materials for the written hearing. The presiding officer may direct the department or the dam owner to pay for the costs of the interpreter. The presiding officer's decision to direct payment shall be based upon an equitable consideration of all the circumstances in each case, such as the ability of the dam owner to pay for the costs of the interpreter.

(4) A copy of the administrative complaint.

(5) A statement regarding the materials that may be submitted for the written hearing. "Submittals" shall include any "writing" as defined by Evidence Code section 250 and may include written testimony and statements from witnesses and representatives, exhibits, and arguments. Any expert witness submittals must include the qualifications of each expert witness. All submittals must be certified under penalty of perjury under the laws of the State of California.

(d) If the dam owner objects to a written hearing under this section they must submit a written objection to the presiding officer, within fifteen (15) calendar days of service of the notice of written hearing under subsection (b). If the dam owner submits a timely objection, a hearing shall be noticed and held under section 337.16.

(e) The presiding officer may, for good cause, on their own motion or upon the request of any party, extend the deadline for any submittal, in accordance with the following.

(1) The request for a continuance shall be made in writing and shall include the name of the dam and dam owner and the deadline of the submittal at issue.

(2) The presiding officer must receive the request no less than seven (7) calendar days prior to the submittal deadline. The presiding officer may ask other parties for comments on the request and provide a reasonable period of time within which to submit comments.

(3) The request shall identify any previous requests to extend the submittal deadline and shall contain a statement of all facts the party contends constitute good cause to extend the deadline. The presiding officer has the discretion to waive the requirement for a written request or consider a written request submitted after the time period prescribed in subsection (e)(2) upon a showing of additional good cause. The requesting party must include all facts that party contends constitute additional good cause to waive those requirements.

California Code of Regulations, Title 23, Division 2, Chapter 1

(4) When a submittal deadline is extended, the presiding officer shall give written notice to all parties of the new submittal deadline and shall cause the new submittal deadline to be posted on the department's website for its Division of Safety of Dams.

(5) If the presiding officer continues the submittal deadline, the presiding officer shall provide notice to the parties at least three (3) calendar days before the current deadline, unless providing that notice is infeasible because the presiding officer waived the seven (7) calendar day time period specified in subsection (e)(2) in accordance with subsection (e)(3).

(f) The dam owner may request that a hearing noticed under section 337.16 be converted to a written hearing to be held in accordance with this section by submitting a written request to the presiding officer demonstrating good cause. The presiding officer may, upon a showing of good cause, convert a hearing noticed under section 337.16 to a written hearing to be held in accordance with this section. When considering whether to convert the hearing, the presiding officer shall consider the factors set forth in subsection (a).

(g) If a dam owner submits a timely request for a hearing, and a written hearing is scheduled under this section, a dam owner or the department's failure to timely submit a submittal by the deadline set by the presiding officer will result in the exclusion of any materials that were not timely submitted, and the presiding officer will be authorized to issue a final decision based on the timely submittals received. Notwithstanding the preceding sentence, if the dam owner or department demonstrates that failure to meet the submittal deadline was due to circumstances beyond their reasonable control or otherwise demonstrates good cause for the failure and requests that the submittal deadline be reset, the presiding officer shall set a new submittal deadline, for the presiding officer's consideration for their final decision.

Authority cited: Section 6078, Water Code.

Reference: Sections 6428, 6429, 6431 and 6432, Water Code.

§ 337.18. Continuance of Hearing.

(a) The presiding officer may, for good cause, on their own motion or upon the request of any party, continue ~~the~~ a hearing noticed under section 337.16 to another date, in accordance with the following.

(1) The request for a continuance shall be made in writing and shall include the name of the dam and dam owner, and the date, time, and place of the scheduled hearing.

(2) The presiding officer must receive the request no less than seven (7) calendar days

California Code of Regulations, Title 23, Division 2, Chapter 1

prior to the scheduled date of the hearing. The presiding officer may ask other parties for comments on the request for a continuance and provide a reasonable period of time within which to submit comments.

(3) The request shall identify any previous requests to continue the matter and shall contain a statement of all facts the party contends constitute good cause to continue the matter. The presiding officer has the discretion to waive the requirement for a written request or consider a written request submitted after the time period prescribed in subsection (a)(2) upon a showing of additional good cause.

(4) When a continuance is ordered, the presiding officer shall give written notice to all parties of the time and place of the continued hearing.

(5) If the presiding officer continues the hearing, the presiding officer shall provide notice to the parties at least three (3) calendar days before the scheduled hearing, unless providing that notice is infeasible because the presiding officer waived the seven (7) calendar day time period specified in subsection (a)(2) in accordance with subsection (a)(3).

(b) A dam owner's failure to appear at the time and place of the hearing that was continued under this section constitutes a waiver of the request for hearing and the department will be authorized to issue a final decision as described in section 337.12, subsection (b). Notwithstanding the preceding sentence, if the dam owner demonstrates that failing to appear at the continued hearing was due to circumstances beyond the dam owner's reasonable control or otherwise demonstrates good cause for failing to appear, the presiding officer shall reschedule the continued hearing, and the department shall not issue a final order due to the dam owner's failure to appear at the continued hearing.

Authority cited: Section 6078, Water Code.

Reference: Sections 6428, 6429, 6431 and 6432, Water Code.

§ 337.20. Conduct of Evidentiary Hearings.

(a) Hearings shall be conducted in a manner deemed most suitable to ensure fundamental fairness to all parties concerned, and with a view toward securing all relevant information and material necessary to render a decision without unnecessary delay. Subdivisions (b) – (e) and (g) do not apply to written hearings noticed under section 337.17.

(b) Parties may be required to submit written materials before the hearing, and shall be provided with a reasonable period of time to do so. Any pre-submittal requirements, including those described in subsections (b)(1) – (b)(5), shall be included in the hearing notice issued by the department.

California Code of Regulations, Title 23, Division 2, Chapter 1

(1) The hearing notice shall require that all parties intending to present evidence at a hearing shall submit the following information to the department prior to the hearing: the name of each witness whom the party intends to call at the hearing, the subject of each witness's proposed testimony, the estimated time required by the witness to present direct testimony, and if an expert witness is called, the qualifications of each expert witness. The required information shall be submitted to the department and to other parties designated by the department in accordance with the procedure specified in the hearing notice.

(2) The hearing notice may require that direct testimony be submitted in writing prior to the hearing. Copies of written testimony and exhibits shall be submitted to the department and to other parties designated by the department in accordance with provisions of the hearing notice or other written instructions provided by the department. The hearing notice may require multiple copies of written testimony and other exhibits for use by the department.

(3) Any witness providing written testimony shall appear at the hearing and affirm that the written testimony is true and correct. Written testimony shall not be read into the record unless allowed by the presiding officer.

(4) Where any of the provisions of this section have not been complied with, the presiding officer may refuse to admit the proposed testimony or the proposed exhibit into evidence, and shall refuse to do so where there is a showing of prejudice to any party. This rule may be modified where a party demonstrates that compliance would create severe hardship.

(5) Rebuttal testimony generally will not be required to be submitted in writing, nor will rebuttal testimony and exhibits be required to be submitted prior to the start of the hearing.

(c) The parties to the action and interested persons may provide oral testimony at the hearing. Oral testimony shall proceed in the following order, unless the presiding officer determines that a different order will be more efficient given the facts and circumstances of the case:

(1) DSOD.

(2) Cal OES, if the action relates to compliance with Water Code, Division 3, Part 1, Chapter 4, Article 6.

(3) Dam owner.

(4) Interested persons.

(d) The presiding officer may allow rebuttal testimony.

California Code of Regulations, Title 23, Division 2, Chapter 1

(e) Cross-examination may be allowed if deemed appropriate by the presiding officer. The presiding officer and persons advising the presiding officer may ask questions at any time and the presiding officer may close the public testimony portion of the hearing when a reasonable opportunity to present all questions and points of view has been allowed.

(f) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be considered if it is the sort of evidence on which responsible persons are accustomed to relying in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The presiding officer may take official notice of such facts as may be judicially noticed by the courts of this state. Unduly repetitious or irrelevant evidence shall be excluded upon order by the presiding officer.

(g) The presiding officer may establish reasonable time limits for presentations and may require individuals to consolidate their comments to avoid repetition.

Authority cited: Section 6078, Water Code.

Reference: Sections 6428, 6429, 6431 and 6432, Water Code.

§ 337.22. Service.

(a) Whenever DSOD or the department is required to serve documents on a dam owner under the provisions of this article, the dam owner shall be served by using at least one of the following methods:

(1) First-class mail, registered mail or certified mail through the United States Postal Service, or through a mail or parcel delivery service. Where service is made by mail, the proof of service shall show the date and place of deposit in the mail, the name and address of the person served as shown on the mailing envelope and that the envelope was sealed and deposited in the mail with the postage fully prepaid.

(2) Electronic mail if the dam owner agrees in writing to service of the notice by electronic mail.

(3) Personal service.

(b) If, after the exercise of reasonable diligence, service cannot be achieved pursuant to

California Code of Regulations, Title 23, Division 2, Chapter 1

subsections (a)(1) – (a)(3), then service may be made by leaving the document at the residence or business of the person named to be served, or at the physical location of the dam that is the subject of the document being served, with a person not less than 18 years of age. Where service is made in this manner, the proof of service shall also state the date and place of delivery and the name of the person to whom the documents were given. Where the person making the service is unable to obtain the name of the person to whom the documents were given, the person making the service may substitute a physical description for the name.

Authority cited: Section 6078, Water Code.

Reference: Sections 6428, 6429, 6431 and 6432, Water Code.

§ 337.24. Settlement.

The parties may reach a settlement at any time before an order becomes final. Upon submission of a settlement agreement signed by all the parties, the department or the presiding officer, if a hearing was requested, shall issue an order including the terms of the settlement agreement.

Authority cited: Section 6078, Water Code.

Reference: Sections 6428, 6429, 6431 and 6432, Water Code.

§ 337.26. Ex Parte Communications.

(a) While the proceeding is pending, there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the presiding officer or persons advising the presiding officer from the parties or from any interested person outside the department, without notice and opportunity for all parties to participate in the communication. Nothing in this section precludes a communication, including a communication from an employee or representative of the department, made on the record at the hearing. For the purpose of this section, a proceeding is “pending” from the issuance of the department’s notice of hearing.

(b) A communication otherwise prohibited by this section is permissible when:

(1) The communication is required for disposition of an ex parte matter specifically authorized by statute or concerns a matter of procedure or practice, including a request for a continuance that is not in controversy; or

(2) The communication is for the purpose of assistance and advice to the presiding officer from a person, including department staff, who has not served as investigator, prosecutor, or advocate in the hearing or its prehearing stage.

(c) If, while the proceeding is pending but before serving as a presiding officer, a person

California Code of Regulations, Title 23, Division 2, Chapter 1

receives a communication of a type that would be in violation of this section if received while serving as presiding officer, the person, promptly after starting to serve, shall disclose the content of the communication on the record and give all parties an opportunity to address it.

(d) If the presiding officer receives a communication in violation of this section, the presiding officer shall make all of the following a part of the record in the proceeding:

(1) If the communication is written, the writing and any written response of the presiding officer to the communication.

(2) If the communication is oral, a memorandum stating the substance of the communication, any response made by the presiding officer, and the identity of each person from whom the presiding officer received the communication. The presiding officer shall notify all parties that a communication described in this subsection has been made a part of the record. Within ten (10) calendar days after receipt of notice of the communication, a party may comment on the communication.

(e) A presiding officer's receipt of a communication in violation of this section may be grounds for disqualification of the presiding officer.

Authority cited: Section 6078, Water Code.

Reference: Sections 6428, 6429, 6431 and 6432, Water Code.

§ 337.28. Decision.

(a) Within one hundred-eighty (180) calendar days of the conclusion of the hearing, the presiding officer shall issue a written decision based on evidence in the record. The decision shall include the presiding officer's findings of fact and conclusions, and may provide and order any of the following:

(1) With respect to administrative civil penalties, the decision may concur with the administrative civil penalty proposed in the administrative complaint, modify the amount of the administrative civil penalty, or refuse to impose an administrative civil penalty.

(2) With respect to reservoir restrictions, the decision may concur with the restriction proposed in the administrative complaint, modify the restriction proposed in the administrative complaint, or refuse to impose a reservoir restriction.

(3) Order the dam owner to reimburse the department for the costs of preparing an EAP, including inundation maps.

California Code of Regulations, Title 23, Division 2, Chapter 1

- (4) Authorize the imposition of property liens on land owned by dam owner.
- (5) Order that the dam owner pay fees or penalties and interest imposed by statute.
- (6) Order any other appropriate action authorized under Water Code, Division 3, Part 1 that will ensure compliance with Water Code, Division 3, Part 1 and implementing regulations.
- (b) The presiding officer shall issue the final decision of the department, which shall be served on the parties.

Authority cited: Section 6078, Water Code.

Reference: Sections 6428, 6429, 6431 and 6432, Water Code.

§ 337.30. Payment of Penalties, Fees, Interest, and Costs.

An administrative civil penalty, fees, penalties and interest imposed by statute, and costs imposed on the dam owner under this article shall be due and payable to the department within sixty (60) calendar days after a final order has been served. All monetary sums recovered shall be deposited into the Dam Safety Fund established by Water Code section 6308.

Authority cited: Section 6078, Water Code.

Reference: Sections 6308, 6428, 6431 and 6432, Water Code.

§ 337.32. Property Liens.

(a) The department will, as necessary, levy property liens on an owner who violates any provision of Water Code, Division 3, Part 1, implementing regulations, or any department approvals, orders, or requirements issued under Water Code, Division 3, Part 1 or implementing regulations. If the department decides to levy property liens, the department shall record a lien with the appropriate county recorder to recover all penalties imposed, fees, interest, and costs charged to the owner under this article, including the following:

- (1) Administrative civil penalties.
- (2) Fees, interest, and penalties, as required by statute.
- (3) Cost of preparing an EAP and inundation maps.
- (b) Before recording a lien, the department shall provide the dam owner notice and an opportunity for a hearing to contest the amount of the lien. The dam owner must submit a written request for a hearing to the designated department office, as identified in the notice of

California Code of Regulations, Title 23, Division 2, Chapter 1

intent to file a lien, within twenty (20) calendar days of the date that the department served the notice of intent to file a lien. The request for a hearing shall at a minimum include a summary of any legal and factual basis or bases for challenging the property lien.

(1) The notice of intent to file a lien shall be provided at least thirty (30) calendar days before the ~~hearing~~ lien may be recorded.

(2) The notice of intent to file a lien shall include the following information:

(A) Identification of the department as the entity on whose behalf the lien is to be imposed.

(B) The department's authority for the imposition of the lien.

(C) A legal description and assessor's parcel number for the real property upon which the lien is to be imposed.

(D) The amount of the lien.

(E) The name of the property owner of record.

(F) Statement that the dam owner's failure to request a hearing in accordance with section 337.32, subsection (b), constitutes a waiver of the right to a hearing. ~~The time and date of a hearing before the department at which time the owner may appear to contest the amount of the lien.~~

(c) Hearings described in subsection (b) shall be conducted in accordance with section 337.14.

(d) Upon recordation, the lien shall continue until it is released by the department in the applicable county.

Authority cited: Section 6078, Water Code.

Reference: Sections 6428, 6429, 6431 and 6432, Water Code.

Article 8. Adjustments to Application Fees

§ 350. Annual Application Fee Adjustments.

Effective July 1 of each calendar year, the fee schedule set forth in Water Code section 6300 shall be automatically adjusted by the change in the Consumer Price Index for Urban Consumers as of January 1 of that calendar year.

Authority cited: Section 6078, Water Code.

Reference: Section 6300(e), Water Code.

§ 360. Periodic Application Fee Adjustments.

(a) The department shall determine if periodic adjustments to the application fees are needed in accordance with Water Code section 6300, subdivision (f) to ensure the filing fees collected cover the department's reasonable costs for application work, which may include, but is not limited to, design review and construction oversight. Periodic adjustments to the application fees shall be calculated in accordance with this section.

(b) The department shall determine its application associated costs over at least the past five years.

(c) The department shall determine the total amount of application fees collected over the same time period used in subsection (b) ~~past five years~~.

(d) The department shall analyze the department's application associated costs and application fees collected by the department over the ~~five year~~ time period specified in subsections (b) and (c) and modify the application fee schedule set forth in Water Code section 6300, subdivision (a) to align costs incurred with fees paid, if necessary. ~~Changes~~ Modifications to the application fee schedule are to be effective the following July 1. The department shall notify dam owners of modifications to the application fee schedule by June 1 and shall make the modified application fee schedule publicly available by July 1.

Authority cited: Section 6078 and 6300, Water Code.

Reference: Section 6300(f), Water Code.

§ 370. Application Fee Schedule.

Applications shall be subject to the filing fee schedule specific to the fiscal year in which the application was considered complete by the department. This filing fee schedule shall remain in effect until the application is closed out or terminated.

Article 9. Application Fee Refunds

§ 400. Refunding of Application and Further Fees.

The department shall refund application fees if the department has determined that an application is not required for the proposed work and if a dam owner submits a written request for a refund within 90 days of the date of the department's letter notifying the dam owner that an application is not required ~~submitting a complete application~~ for the proposed work.

Authority cited: Section 6078, Water Code.

Reference: Section 6300(g), Water Code.

Article 10: Phased Approvals for Construction, Enlargement, Alteration, Repair, or Removal of Dams or Reservoirs

§ 450. Purpose of Phased Approval.

(a) The department recognizes that certain dam or reservoir projects may need to be constructed in stages, called “phases,” necessitating the approval of these phases from the department. Dam owners may have the final design for an individual component(s) of a dam or reservoir project, but because of the scope, size, and complexity of the project, those individual components may need to be completed before the design of the entire project is complete. This Article governs those instances.

(b) Department approval of a phase of a dam or reservoir project does not guarantee the approval of subsequent phases of the project. Each phase will be reviewed and approved separately.

Authority cited: Section 6078, Water Code.

Reference: Sections 6200 and 6225, Water Code.

§ 452. Definitions

(a) “Department” means the California Department of Water Resources.

(b) “Dam owner” has the same meaning as “Owner” provided in section 6005 of the Water Code.

(c) “Dam or Reservoir Project” means the construction of a new dam or reservoir or the enlargement, repair, alteration, or removal of an existing dam or reservoir that requires the submission of an application to and subsequent written approval from the department.

(d) “Phase” means a portion of work to be completed under an application that can independently be fully designed and constructed prior to subsequent work being fully designed and constructed.

(e) “Phased approval” means written approval from the department to commence work on a phase of a dam or reservoir project prior to approving the application in its entirety.

(f) “Requestor” means a dam owner or representative acting on behalf of the dam owner.

Authority cited: Section 6078, Water Code.

Reference: Sections 6005, 6200 through 6230, Water Code.

California Code of Regulations, Title 23, Division 2, Chapter 1

§ 454. Eligibility for Phased Approval Process.

Dam and reservoir projects are eligible for phased approval if, as determined by the department pursuant to section 458, the project can be broken into phases and the dam owner completes the process outlined in section 456.

Authority cited: Section 6078, Water Code.

Reference: Sections 6202, 6203, 6205, 6206, 6226, 6227, and 6228, Water Code.

§ 456. Phased Approval Consideration.

(a) To be considered for the phased approval process, a written request must be submitted to the department. Upon such a request, the department shall have 180 calendar days to consider the request and notify the requestor of its decision.

(1) The acceptance of a phased approval process is not a department guarantee that the project schedule required in (b)(4) of this section will be met.

(b) The requestor must include the following information in its written request to the department to be considered for the phased approval process:

(1) All requirements for a complete application package as required by section 310.

(2) At least 30 percent design plans for the entire project that show the full project.

(3) A detailed explanation of the proposed project phases.

(4) A detailed project schedule that includes the following:

(A) The design, review, and construction timeline for each phase; and the following, if applicable:

(B) The CEQA process.

(C) Additional permitting required.

(D) The water rights process.

(5) A document describing considerations necessitating breaking a dam or reservoir project into phases.

California Code of Regulations, Title 23, Division 2, Chapter 1

Authority cited: Section 6078, Water Code.

Reference: Sections 6200, 6202, 6203, 6205, 6206, 6226, 6227, 6228, and 6230, Water Code.

§ 458. Phased Approval Application Evaluation.

The department will consider the following factors to determine if a dam or reservoir project can be accepted for phased approval on a case-by-case basis:

(a) The dam or reservoir project phases are distinct and can be approved and constructed as independent components. Each phase can be approved with independent drawings and specifications that will not be dependent on a subsequent phase.

(b) The ability to make design changes to phases that will be dependent on a previously designed and constructed phase.

(c) CEQA and other permit requirements that impact site access, schedule, and dam operations.

(d) Dam or reservoir project funding source that requires a phase to be initiated or constructed within a specified time to be eligible for the funding.

(e) Dam and reservoir projects to rehabilitate dams where each phase independently addresses one or more deficiencies.

Authority cited: Section 6078, Water Code.

Reference: Sections 6200, 6202, 6203, 6205, 6206, 6226, 6227, 6228, and 6230, Water Code.

§ 460. Phased Approval Process.

(a) Department approval of the first phase is specific to the first phase and the following must be completed, if applicable, for the department's approval of the first phase:

(1) Plans and specifications associated with the first phase of construction are complete and meet the requirements in section 304.

(2) Items related to CEQA as required by section 310 (e).

(3) The owner has provided evidence of water rights, as required by section 303 for the construction of new dams or the enlargement of existing dams.

California Code of Regulations, Title 23, Division 2, Chapter 1

(4) A draft inundation map has been provided for the project as required by Article 6 for the construction of new dams or the enlargement of existing dams.

(5) Fees associated with the application have been paid in full.

(b) For approval of subsequent phases, the plans and specifications associated with the specific phase of construction are complete and meet the requirements in section 304.

(c) Department approval of each phase is limited to that phase and excludes subsequent phases that may still be under review.

Authority cited: Section 6078, Water Code.

Reference: Sections 6200, 6202, 6203, 6205, 6206, 6226, 6227, 6228, 6230, 6300 and 6304, Water Code.

§ 462. Start of Construction.

For purposes of amending the estimated project cost under Water Code section 6300, subdivision (d), the commencement of construction is the start of construction for the first phase.

Authority cited: Section 6078, Water Code.

Reference: Section 6300(d), Water Code.