

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

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 6304~~6300~~, ~~as made specific by Section 314 of this subchapter.~~

(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.

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§ 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(~~cd~~)-(~~ef~~) 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(~~be~~) 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.

~~§ 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.*~~

§ 3145. 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.

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(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.

(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.

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Article 5. Dams Owned by the Department of Water Resources

§ 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.

§ 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.

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Article 6. Inundation Maps

§ 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.

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.

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- (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.
- (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.

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(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.

§ 335.10. 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.

(9) An appropriate scale bar and the stated map scale.

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(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.

§ 335.14. 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.

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Article 7. Enforcement

§ 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.

(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

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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, **as applicable**, 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 notice~~ 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.

(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

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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 ~~the~~ 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.

(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. The notice shall 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).

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(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, **including but not limited to the examples provided in subsections (g)(1) to (g)(4) below**, 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.

(1) Occurrence of a natural disaster.

(2) Declared emergency by state or local officials.

(3) Sudden medical emergency or hospitalization.

(4) Military deployment.

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 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 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

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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.

(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.

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(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.

(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.

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§ 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 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.

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(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.

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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.~~

(a) The application fee schedule set forth in Water Code section 6300, subsections (a)(1) through (a)(7), shall be annually adjusted by the department to reflect changes to the United States Bureau of Labor Statistic's Consumer Price Index for all Urban Consumers (CPI-U) in accordance with Water Code section 6300, subsection (e).

(b) Effective July 1 of each calendar year, the percentages in Water Code section 6300, subsections (a)(1) through (a)(7) are to be adjusted as follows:

(1) The annual change to CPI-U is based on the difference between the December index value from the previous year and the December index value from 2022 as shown in the following formula:

Change to CPI-U = (December Index Value Previous Year) – (December Index Value 2022)

(2) The adjustment to the to the percentages in Water Code section 6300, subsections (a)(1) through (a)(7), is to be determined using the following formula and rounded to four decimal places:

Adjustment = (Change to CPI-U) / (December Index Value 2022)

(3) The percentages in Water Code section 6300, subsections (a)(1) through (a)(7), are to be adjusted using the following formula and rounded to two decimal places:

Adjusted Percentage = (Water Code percentage) X (1 + Adjustment)

(c) Should CPI-U data for the previous December not be available by May 31, the prior adjusted percentages will remain effective.

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.~~

(a) Beginning January 1, 2033, and every ten years following, the department shall determine if application fees collected by the department reasonably align with application related costs incurred by the department in accordance with Water Code section 6300, subsection (f).

(b) In determining if application fees collected reasonably align with costs incurred by the department related to applications, the department will determine the following.

(1) Fees Collected is the total amount of application fees collected by the department in the past ten fiscal years.

(2) Costs Incurred is the total amount of application related costs incurred by the department in the past ten fiscal years and include:

(A) All department costs associated with the review and approval of an application, including but not limited to:

(i) Engineering analyses performed to ensure that the submitted designs are state of practice.

(ii) Engineering reviews of engineering reports submitted to support plans and specifications.

(iii) Engineering and geology analyses and reviews of structures' foundations and ground motions related to seismicity.

(iv) Review of plans and specifications to ensure constructability to avoid design changes during construction.

(B) All department costs associated with the oversight of application related work being carried out, including but not limited to:

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(i) Construction inspections performed by our engineers and engineering geologists to ensure construction work conforms to approved plans and specifications.

(ii) Review of design changes made during construction.

(C) Should the department determine that the amount of Fees Collected not exceed or be less than five percent of the Costs Incurred, this will be considered reasonable alignment, and the department will not adjust the application fee schedule set in Water Code section 6300(a).

(c) In cases where the department determines that Fees Collected are not in reasonable alignment with Cost Incurred, the department shall use the following methodology to adjust the percentages in Water Code section 6300, subsections (a)(1) through (a)(7).

(1) The Difference between Fees Collected and Costs Incurred will be calculated using the following formula and rounded to the fourth decimal place:

Difference = (Fees Collected) / (Cost Incurred)

(2) A Multiplication Factor to be used in adjusting the percentages in Water Code section 6300, subsections (a)(1) through (a)(7), will be calculated using the following formula and rounded to the fourth decimal place.

Multiplication Factor = (0.95) / (Difference)

(3) In addition to the annual Adjustment in section 350, a Periodic Adjustment to the percentages in Water Code section 6300, subsections (a)(1) through (a)(7), is to be performed using the following formula and rounded to two decimal places.

Periodic Adjustment = (Water Code Percentage) X (Multiplication Factor) X (Annual Adjustment)

(4) The Multiplication Factor will remain in effect until the department determines that the Fees Collected are not in reasonable alignment with Cost Incurred and a new Multiplication Factor determined.

(d) Adjustments to the percentages in Water Code section 6300, subsections (a)(1) through (a)(7) by this section are to be effective July 1, 2033.

Authority cited: Section 6078 and 6300, Water Code.

Reference: Section 6300(f), Water Code.

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§ 365. Notification.

(a) On or before June 1 every year, the application fee schedule set in Water Code section 6300(a) and annually pursuant to section 350 shall be posted on the department's website for its Division of Safety of Dams.

(b) Beginning June 1, 2033, the fee schedule set in Water Code section 6300(a) and adjusted pursuant to 360 shall be posted on the department's website for its Division of Safety of Dams.

Authority cited: Section 6078, Water Code.

Reference: Section 6300(a), 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.~~

(a) Application fees shall be subject to the application filing fee schedule in effect when the department has received the following:

(1) A completed and signed application form.

(2) A minimum of twenty percent of the required application fee.

(3) Plans and specifications, or a work plan, that include the following:

(A) Scope of work to be performed.

(B) Dimensions of features to be constructed.

(C) Materials to be used in construction.

(b) Within forty-five calendar days of receiving all items required in subsection (a)(3), the department shall issue a letter that includes the application filing fee schedule that shall remain in effect until all work related to the application is completed.

Authority cited: Section 6078, Water Code.

Reference: Section 6300, Water Code.

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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.

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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, **pursuant to Water Code sections 6201 and 6226**, to and subsequent written approval from the department, **pursuant to Water Code sections 6200 and 6225**.

(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.

§ 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.

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Authority cited: Section 6078, Water Code.

Reference: Sections **6200**, **6201**, 6202, 6203, 6205, 6206, **6225**, 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.

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:

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(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.

(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.

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§ 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.