

State of California
California Natural Resources Agency
California Code of Regulations, Title 23. Waters.
Division 2. Department of Water Resources
Chapter 1. Dams and Reservoirs
Modifications to Articles 2, 5, 6, and 7
Add Articles 8, 9, and 10
September 2025

Initial Statement of Reasons – Dam Safety Regulations

1. Introduction

The Department of Water Resources' (Department) Division of Safety of Dams (DSOD) implements California's Dam Safety Program. The Dam Safety Program was established in 1929, and DSOD currently regulates approximately 1,230 non-federal jurisdictional dams located throughout California. More than half of the dams are classified as having a downstream hazard potential of "Extremely High" or "High," meaning that their failure would likely result in the loss of life. DSOD regulates some of the largest dams in the nation in a state with complex geology and an active seismic regime. Also, densely populated communities are often located immediately downstream of these dams.

Dams serve many purposes and uses, provide multiple benefits, and are operated and maintained by a variety of dam owners with varying financial resources and technical capabilities. There are more than 600 owners of jurisdictional sized within DSOD's regulatory oversight, and dam owners are ultimately responsible for operating and maintaining their dams in a safe manner and in compliance with the Dam Safety Program requirements.

The Department seeks to add, amend, and repeal dam safety regulations to the following articles of the California Code of Regulations, Title 23, Division 2, Chapter 1 (CCR Title 23):

- Article 2. Applications for Construction, Enlargement, Repair, Alteration, or Removal of Dams or Reservoirs (amend and repeal)
- Article 5. Dams Owned by the Department of Water Resources (amend and repeal)
- Article 6. Inundation Maps (amend and repeal)
- Article 7. Administrative Enforcement (amend and repeal)
- Article 8. Annual and Periodic Adjustments to Application Fees (Add)
- Article 9. Application Fee Refunds (Add)
- Article 10. Phased Approvals (Add)

The modifications and additions to the regulations are intended to align CCR Title 23 with recent changes to the California Water Code (Water Code) and to update and add clarity to DSOD's practices.

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Senate Bill 122, effective July 10, 2023, amended Water Code section 6300 as follows:

- Clearly noting that application filing fees are required for the alteration, repair, and removal of existing dams in addition to the prior fee requirement for the construction of new dams and the enlargement of existing dams.
- Updated the application fee schedule in Water Code section 6300, subdivision (a) to reflect the Department's application review costs.
- The Department is required to annually adjust the application fee schedule based on changes in the Consumer Price Index for goods and services.
- The Department is required to adopt, by regulation, a process to adjust application fees to ensure that the fees collected cover the Department's reasonable costs for application-related work.
- While not required to do so, the Department may adopt, by regulation, a methodology for refunding application fees. Application fees cannot be refunded until regulations have been adopted.

To implement amendments made to Water Code section 6300, the Department proposes to amend and repeal regulations in Article 2, which provide project application requirements, in addition to other minor amendments for clarity. Additionally, the Department proposes adding Article 8 to provide a methodology for annually and periodically adjusting the application filing fee schedule and adding Article 9 to provide the criteria and methodology for issuing application fee refunds.

In addition to the changes related to Senate Bill 122, the Department proposes the following changes to CCR Title 23 to update and add clarity to DSOD's practices:

Article 5 requires that the Department retain a board of three consultants to report to DWR's Director on the safety of Department owned dams that are also regulated by DSOD. These boards are retained at least once every five years to review the operational performance of Department owned dams and for major construction projects (e.g., new dam construction, large rehabilitation project). The board's purpose is to ensure that Department owned dams are receiving the same regulatory oversight as other jurisdictional dams since both DSOD and O&M reside within the Department. This Article only applies to dams owned by the Department. Changes to Article 5 would include:

- Adding language to specify that costs associated with DSOD's participation in these boards be funded by the Department's Division of Operations and Maintenance since costs are solely associated with dams owned by the Department.
- Removing the option of substituting a Federal Power Commission's (aka Federal Energy Regulatory Commission (FERC)) five-year independent review in place of the five-year periodic review required by the regulations.

These proposed changes will not reduce any dam safety oversight by DSOD or FERC on dams owned by the Department.

Article 6 provides requirements for the preparation of dam breach inundation maps for emergency action plans required by the Water Code section 6161. Since these regulations were approved by the Office of Administrative Law on November 29, 2018, the Department has determined that minor revisions are necessary to continue to provide dam owners with clear requirements as current practices and engineering technology evolve. The most substantial change will be to CCR Title 23 section

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335.14(b), to remove the requirement that dam owners submit a hard copy of the technical memorandum.

Article 7 provides a process for civil administrative enforcement actions against dam owners who DSOD determines are non-compliant with dam safety requirements. Dam owners who wish to contest an issued administrative complaint have the opportunity for a hearing. Currently, hearings can be held at the Office of Administrative Hearings or before a Department presiding officer, as determined by a neutral Department employee. Changes to Article 7 would include:

- Adding a written hearing option.
- Clarifying/amending the process to impose property liens.

Article 10 would formalize DSOD's practice of approving phases of an application for a dam project. Phased approvals allow portions of application-related work to proceed to construction prior to the application being fully approved.

2. Problem Statement

Senate Bill 122 modified several sections of the Water Code related to filing fees that are required to accompany applications submitted to DSOD for the construction of new dams and the enlargement, alteration, repair, and removal of existing dams. To align CCR Title 23 with these modifications:

- Article 2 needs to be updated to clearly show that that this article now applies to alteration, repair, and removal applications. Article 2 also needs minor cleanup, such as removing duplicative requirements that are included in the Water Code and reference to other articles.
- Article 8 needs to be added to provide processes for annually and periodically adjusting the application fee schedule set by Water Code section 6300, subdivision (a) as required by Water Code section 6300, subdivisions (e) and (f), respectively.
- Article 9 needs to be added to provide a methodology for determining the criteria and process for refunding application filing fees when requested by a dam owner as allowed by Water Code section 6300, subdivision (g).

Existing regulations need to be updated, and new regulations added, to add clarity and update DSOD's practices:

- Article 5 needs to be updated to add language that clearly states that DSOD's costs associated with participation in Director's Safety Review Boards are to be funded by the Department's State Water Project since these costs are associated with dams owned and operated by the State Water Project. Also, the option of substituting a FERC 5-year independent review board in place of a Director's Safety Review Board needs to be removed as the current Federal regulations that govern these FERC boards no longer align with requirements set by the Water Code.
- Article 6 needs minor updates, with the most substantial change being the removal of the requirement that dam owners submit to DSOD a hard copy of a technical memorandum as currently required in section 335.14(b).
- Article 7 needs to be updated to add language to provide the DSOD and dam owners subject to enforcement action the option to have a hearing based on the submittals of the parties to the

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hearing for certain matters. This will increase hearing access for dam owners that want to contest the administrative complaint and may reduce hearing costs for all parties. Also, the hearing process for property liens needs to be clarified.

- Article 10 needs to be added to formalize DSOD's practice of approving phases of dam construction work for large dam projects; phased approvals allow portions of application-related work to proceed to construction prior to an application being fully approved. This will also add clarity to DSOD's process.

3. Overall Purpose

The purpose of this rulemaking is to align CCR Title 23 with recent changes to the Water Code by Senate Bill 122 and to update and add clarity to DSOD's practices.

4. Necessity and Purpose of each Provision

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

CCR Title 23. Article 2. Section 310.

Purpose: The purpose of the amendment is to change the title of this section to include applications for the alteration, repair, and removal of existing dams regulated by DSOD and to include references to the Water Code sections that pertain to applications for the alteration, repair, and removal of existing dams regulated by DSOD.

Necessity: This amendment is necessary to align with changes made to Water Code section 6300 by Senate Bill 122, which added application fee requirements for the repair, alteration, or removal of an existing dam or and reservoir.

Subsection (a)

Purpose: The purpose of amending this subsection is to include applications for the alteration, repair, and removal of existing dams regulated by DSOD.

Necessity: This amendment is necessary to align with changes made to Water Code section 6300 by Senate Bill 122, which added application fee requirements for the repair, alteration, or removal of an existing dam or and reservoir.

Subsection (b)

Purpose: To repeal this subsection and renumber/relabel the following subsections.

Necessity: This subsection is not necessary as it is duplicative of Water Code sections 6201, 6251, and 6456.

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Subsection (c)

Purpose: The purpose of the amendments are to relabel this section and to clarify what is intended by potential hazards.

Necessity: This clarification is necessary as “potential hazards” is a generic term whereas “downstream hazard potential” is defined in CCR Title 23, section 335.4.

Subsection (d)

Purpose: The purpose of this amendment is to relabel this subsection as (c).

Necessity: This is necessary for clarity to address the repeal of subsection (b).

Subsection (e)

Purpose: The purpose of this amendment is to relabel this subsection as (d).

Necessity: This is necessary for clarity to address the repeal of subsection (b).

Subsection (f)

Purpose: The purpose of these amendments is to relabel this subsection as (e) and to add/clarify references to Water Code to align with changes made by Senate Bill 122.

Necessity: This is necessary for clarity to address the repeal of subsection (b). It is also necessary to clarify that this subsection applies to Water Code application requirements for repairs, alterations, and removals.

Subsection (f)(4) (now Subsection (e)(4))

Purpose: The purpose of this amendment is to clarify which section of the Water Code addresses when the department considers an application with respect to the payment of the application filing fee.

Necessity: This amendment is necessary to align with changes made to Water Code section 6304 by Senate Bill 122.

CCR Title 23. Article 2. Section 311.

Subsection (a)

Purpose: The purpose of the amendment is to include references to the Water Code sections that pertain to applications for the alteration, repair, and removal of existing dams regulated by DSOD. An amendment was also made to add clarity that CCR Title 23 section 310 is not part of the Water Code sections.

Necessity: This amendment is necessary to align with changes made to Water Code section 6300 by Senate Bill 122 and for clarity.

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CCR Title 23. Article 2. Section 314.

Purpose: To repeal this section.

Necessity: This section is not necessary and is not consistent with Water Code section 6302, as amended by Senate Bill 122.

CCR Title 23. Article 2. Section 315.

Purpose: The addition of this section is to provide clarity on how an owner of an unlawfully constructed dam, which is a jurisdictional sized dam constructed without the Department's approval or oversight, must address the dam's unlawful status.

Necessity: To construct a jurisdictional sized dam or reservoir, the Water Code requires that a construction application be submitted to the Department for review and approval and that the dam or reservoir be constructed under the Department's oversight. This section is necessary as it provides options that the owner of an unlawfully constructed dam or reservoir must select and complete to address the unlawful dam or reservoir.

Subsection (a)

Purpose: The purpose is to clearly state that when the Department identifies an unlawfully constructed dam or reservoir, it will notify the owner of the unlawfully constructed dam or reservoir in writing and require the owner to select and complete an option to remedy the dam or reservoir's unlawful status.

Necessity: It is necessary that the owner of an unlawfully constructed dam be officially notified and provided options to abate the dam's unlawful status as the Department may need to take enforcement actions against the dam owner should they not engage the Department in abating the dam's unlawful status.

Subsection (a)(1)

Purpose: The purpose of this subsection is to provide dam owners with an option to remediate a dam's unlawful status by obtaining a certificate of approval from the department. This option would entail submitting a construction application, with appropriate filing fee based on the Water Code, to the Department, completing any required work, and obtaining a certificate of approval from the Department to store water in accordance with the Water Code.

Necessity: This subsection is necessary as it provides an option to abate a dam's unlawful status by obtaining a certificate of approval to store water from the Department. This subsection is also necessary because it details how an application filing fee will be determined for the review of an application for unlawfully constructed dam or reservoir.

Subsection (a)(2)

Purpose: The purpose of this subsection is to provide dam owners with an option to remediate a dam's unlawful status. This option would entail submitting an alteration application, with appropriate filing fee, to the Department and altering the dam or reservoir to less than jurisdictional size.

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Necessity: This subsection is necessary as it provides an option to abate a dam's unlawful status by altering the dam or reservoir to less than jurisdictional size. This subsection is also necessary because it details how a filing fee will be determined for the review of an application for unlawfully constructed dam or reservoir.

Subsection (a)(3)

Purpose: The purpose of this subsection is to provide dam owners with an option to remediate a dam's unlawful status. This option would entail submitting a removal application, with an appropriate filing fee, to the Department for the purpose of removing the dam and reservoir.

Necessity: This subsection is necessary as it provides an option to abate a dam's unlawful status by removing the dam and reservoir.

Subsection (b)

Purpose: The purpose is to clearly state that the owner of an unlawfully constructed dam must submit an application, and appropriate filing fee, per requirements set forth in California Water Code, Division 3, Part 1 and California Code of Regulations, Title 23, Division 2, Chapter 1

Necessity: It is necessary that owners of unlawful dams know that they must comply with applicable sections of the Water Code and regulations after selecting an option and submitting an application, and appropriate filing fee, to the Department.

Subsection (c)

Purpose: The purpose is to set a timeline for an owner of an unlawful dam to respond to the Department as to how they intend to remedy the dam's unlawful status. From the date of the mailing of the Department's letter informing the dam owner of their dam's unlawful status, the owner will have 60 calendar days to select an option to complete to remedy the dam's unlawful status and to respond to the Department in writing.

Necessity: It is necessary to set a timeline for the owner of an unlawful dam to respond to the Department's letter informing them that they own an unlawful dam to ensure that the dam's unlawful status is addressed in a timely manner.

Subsection (d)

Purpose: The purpose is to set a timeline for an owner of an unlawful dam to file an application with the Department. From the date of the Department's letter informing the dam owner of the dam's unlawful status, the owner will have one year to file an application with the Department.

Necessity: It is necessary to set a timeline for the owner of an unlawful dam to submit an application with the Department to ensure that the dam's unlawful status is addressed in a timely manner.

Subsection (e)

Purpose: To clearly state that, notwithstanding subdivisions (a)-(d), the Department may issue directives or orders when an unlawful dam is identified and where the Department determines that dam safety

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remedial actions, emergency work, or enforcement actions are needed. It is also to clearly state that this section does not limit the Department's ability to take enforcement actions related to unlawful dams or reservoirs, including against owners that comply with this section.

Necessity: This section sets out a process to remedy a dam's unlawful status. This subsection sets forth that the Department's regulatory and enforcement powers are not limited by this process.

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Article 5. Dams Owned by the Department of Water Resources

CCR Title 23. Article 5. Section 333.

Purpose: The purpose of the amendments is to add clarity and better align this section with the Water Code section 6056, including removing the option to substitute the Federal Energy Regulatory Commission's (FERC) five-year independent review board for the Director's Safety Review Board.

Necessity: These amendments are necessary to better align with the requirements in Water Code section 6056 and clarify the requirements. The Federal Power Commission was re-named the Federal Energy Regulatory Commission in 1977, so it is necessary to amend/update this section to reflect the re-naming. Also, federal regulations that govern the FERC's five-year independent review board no longer align with Water Code section 6056.

CCR Title 23. Article 5. Section 334.

Subsection (a)

Purpose: The purpose of the addition of this subsection is to specify that the Department's State Water Project is responsible for all DSOD's costs related to Director Safety Review Boards.

Necessity: The requirement for Director's Safety Review Boards only applies to dams owned by the Department. It is necessary to add this subsection to specify that the State Water Project will cover DSOD's costs associated with these boards to avoid having other dam owners regulated by DSOD subsidize costs associated with these boards through revenue collected by annual fees.

Subsection (b)

Purpose: The purpose of the addition of this subsection is to specify that the Department's State Water Project is responsible for all DSOD's costs related to Director Safety Review Boards and that it will reimburse DSOD by June 30 of each fiscal year in which the costs were incurred.

Necessity: It is necessary to add this section to specify that the State Water Project will cover DSOD's costs associated with these boards to avoid having other dam owners regulated by DSOD subsidize costs associated with these boards through revenue collected by annual fees. It is necessary to have a June 30 deadline to ensure the expenses incurred by DSOD for these boards are received and accounted for in the same fiscal year they were incurred.

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Article 6. Inundation Maps

CCR Title 23. Article 6. Section 335.2.

Subsection (a)(28)

Purpose: The purpose of the amendment is to update the definition of “Two-dimensional hydraulic model.”

Necessity: This amendment is necessary to clarify the definition of “Two-dimensional hydraulic model” as the existing definition includes both “variable” and “vary.”

CCR Title 23. Article 6. Section 335.10.

Subsection (d)(10)

Purpose: The purpose of the amendment is to update the general information that is to be included on inundation map sheets.

Necessity: This amendment is necessary to clarify the definition of “vertical elevation datum” to be used for inundation maps.

CCR Title 23. Article 6. Section 335.14.

Subsection (b)

Purpose: The purpose of the amendment is to remove the requirement that dam owners provide one hard copy of a technical report related to inundation maps.

Necessity: This amendment is necessary as a hard copy of the technical report is no longer needed as the Department moves towards storing these documents digitally.

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Article 7. Enforcement

CCR Title 23. Article 7. Section 337.16.

Subsection (a)

Purpose: The amendments are to provide some minor clarifications and to include a provision for when the Department schedules a written hearing for civil administrative enforcement cases that do not involve the Office of Administrative Hearings.

Necessity: This amendment is necessary to align with the addition of section 337.17 which provides for written hearings and to provide minor clarifications.

CCR Title 23. Article 7. Section 337.17.

Subsection (a)

Purpose: The addition of this section allows the department to conduct written hearings for civil administrative enforcement cases. This section also provides the process of how a written hearing is to be conducted and the criteria that shall be considered when determining whether a matter may be set for a written hearing.

Necessity: This subsection sets forth two options for hearings held before a Department presiding officer. Dams regulated by the Department are located throughout California. If a case is set for a written hearing, the Department and the dam owner could save costs, including travel expenses and the expense of an evidentiary hearing that includes oral testimony and argument. This subsection is also necessary to state that a decision made through a written hearing will solely be decided on the submittals of the parties and interested persons. This subsection also includes criteria that shall be considered when determining whether a matter may be set for written hearing. This criteria is necessary because it sets a uniform standard to determine which cases are suitable to be designated for a written hearing, as opposed to a hearing with oral testimony and argument, by the Department.

Subsection (b)

Purpose: The purpose of this subsection is to provide the dam owner with at least 60 days notice of the deadline to submit written materials, which will be detailed in the notice of hearing. The purpose of this subsection is also to require that the notice of hearing be posted on the Department's website for the Division of Safety of Dams.

Necessity: This subsection is necessary because dam owner needs to have a minimum amount of time to review the hearing notice and to gather, prepare, and submit written materials. The 60-day minimum was selected because more time may be required to prepare submittals for a written hearing because there will not be any oral testimony or argument. The reference to the notice of hearing is necessary to detail the requirements for written submittals. Posting the notice of hearing on the Department's website for the Division of Safety of Dams is necessary to give members of the public and interested persons information about this written hearing.

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Subsection (c)

Purpose: The purpose of this subsection is to set forth the requirements for the notice of hearing.

Necessity: Detailed requirements for the notice of hearing will ensure that the parties and interested persons to a hearing are given the information they need to adequately gather, prepare, and submit written materials.

Subsection (c)(1)

Purpose: The purpose of this subsection is to provide that the notice of hearing shall include submittal deadlines and an address to send the submittals.

Necessity: The parties and interested persons to a hearing must be made aware of the deadline to submit materials. The deadline for each case may vary, depending on the complexity and scope of the enforcement matter. An address must be provided so that the parties know where they must submit their materials.

Subsection (c)(2)

Purpose: The purpose of this subsection is to inform the parties and interested persons to a hearing that the hearing will be governed by California Code of Regulations, Title 23, Division 2, Chapter 1, Article 7.

Necessity: The parties and interested persons to a hearing must be made aware of the regulations that govern the hearing so that they may inform themselves on the regulations that detail the procedural requirements.

Subsection (c)(3)

Purpose: The purpose of this subsection is to provide an opportunity for dam owners that are not proficiently speaking or understanding English to request language assistance and to set a minimum thirty (30) calendar days for requesting language assistance prior to the deadline to submit materials for a written hearing. This subsection also sets criteria for the hearing's presiding officer to use in determining if the Department or dam owner will pay for the cost of an interpreter.

Necessity: This subsection is necessary to explain how and when to request language assistance. It is also necessary to explain how a presiding officer will determine who is responsible for paying for the cost of language assistance.

Subsection (c)(4)

Purpose: The purpose of this subsection is to include a copy of the administrative complaint with the notice of hearing.

Necessity: The parties and interested persons to a hearing must be made aware of the administrative complaint. Including a copy of the administrative complaint is also necessary to confirm the administrative complaint at issue for the hearing.

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Subsection (c)(5)

Purpose: The purpose of this subsection is to include submittal requirements for the notice of hearing. This subsection defines submittal, sets the expert witness requirements, and provides that submittals must be made under penalty of perjury under the laws of the State of California.

Necessity: The parties and interested persons to a hearing must be made aware of the submittal requirements. Defining “submittals” to include any “writing” as defined by Evidence Code Section 250, provides that parties will be able to make submittals that are appropriate for their matter. It is also necessary to provide that submittals may include written testimony and statements from witnesses and representatives, exhibits, and arguments because a written hearing will not have any oral argument or testimony. Expert witness requirements are necessary to ensure that a witness designated as an expert is qualified. Making submittals under penalty of perjury under the laws of the State of California helps ensure that the submittals made for this hearing are accurate and reliable, and it provides consequences for perjury.

Subsection (d)

Purpose: This subsection provides that a dam owner may object to a written a hearing in writing and that if the objection is timely, a hearing will be noticed under section 337.16.

Necessity: This subsection is necessary to ensure that dam owners who are opposed to a written hearing are given an opportunity to object. This objection must be in writing so that the Department has a record of the objection. The objection must be made within 15 calendar days of service of the notice of hearing to avoid delaying the hearing and causing prejudice to the parties and interested persons preparing for the written hearing. This subsection is also necessary to provide the next step if there is a timely written objection, which would be a hearing noticed under section 337.16.

Subsection (e)

Purpose: This subsection is to provide that the presiding officer may extend the deadline to submit written materials, in accordance with subsection (e)(1)-(5).

Necessity: This subsection is necessary as it provides that the presiding officer may extend the deadline to make written submittals upon good cause. This authorizes the presiding office to extend the submittal deadline if necessary, ensuring that the parties are able to participate fully in the written hearing. It is also necessary for the presiding officer to continue the submittal deadline on their own motion, which provides greater flexibility for the presiding officer to manage the written hearing.

Subsection (e)(1)

Purpose: This subsection provides that a request for a continuance must be in writing, and must include the name of the dam owner, dam, and submittal deadline at issue.

Necessity: This subsection is necessary because a request for continuance must be made in writing so that there is a written record of the request. It is necessary that the written request include the name of the dam owner, dam, and submittal deadline at issue because this identifying information will allow the

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presiding officer to quickly identify which matter the request is made for. This is particularly important if a dam owner and/or dam have multiple enforcement matters pending.

Subsection (e)(2)

Purpose: This subsection provides a deadline for the presiding officer to receive a request for a continuance. This subsection also provides that the presiding officer may seek comments on the request and provide the parties with a reasonable time to submit the comments.

Necessity: This subsection is necessary because a request for continuance must have a deadline to avoid delaying the hearing and causing prejudice to the parties and interested persons preparing for the written hearing. It is also necessary to authorize the presiding officer to seek comment from parties to the hearing, who will be impacted by any continuance. This is also necessary as it may inform the presiding officer on whether the parties to the hearing agree or object to the continuance. It is also necessary to provide that the parties to the hearing be given a reasonable opportunity to submit comments.

Subsection (e)(3)

Purpose: This subsection provides that a request shall identify previous requests to extend the deadline, a statement of facts that the party contends is good cause to extend the deadline. This subsection also authorizes the presiding officer to consider a request for continuance that is made orally or beyond the request deadline in section 337.17, subsection (e)(2) upon a showing of additional good cause.

Necessity: This subsection is necessary because a request for continuance must inform the presiding officer of any previous requests to continue the deadline, which could show a pattern of unsupported delay. This subsection is also necessary to provide that the party must provide factual details that they contend support their request. These details must be included for the presiding officer to make a decision, and for the other parties to provide meaningful comments to object or agree with the request. This section also provides that the presiding officer may waive the requirement for a written request or the timing to submit a request upon an additional showing of good cause by the requesting party. This is necessary because a requesting party may have good cause for not being able to meet those requirements, and should be given an opportunity to present these facts.

Subsection (e)(4)

Purpose: This subsection provides that when a submittal deadline is continued, all parties and interested persons be given written notice of the new submittal deadline. The purpose of this subsection is also to require that a new submittal deadline is posted on the Department's website for the Division of Safety of Dams.

Necessity: This subsection is necessary because when the deadline is continued it needs to be in writing and submitted to all parties so that they know the new deadline. Posting the notice of hearing on the Department's website for the Division of Safety of Dams is necessary to inform members of the public and interested persons of the new submittal deadline.

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Subsection (e)(5)

Purpose: This subsection provides when the presiding officer must give notice of a continued submittal deadline.

Necessity: It is necessary to provide notice requirements for when the presiding officer continues a deadline. These requirements ensure fairness to the parties, preparing for the written hearing, and accounts for when less notice is required in light of the presiding officer's waiver of a requirement under section 337.17, subsection (e)(3).

Subsection (f)

Purpose: This subsection provides that a dam owner may request that hearing noticed under section 337.16 be converted to a written hearing. The presiding officer may grant the request upon a showing of good cause.

Necessity: It is necessary to provide dam owners with an option to request that a matter that is set for hearing under section 337.16 be converted to a written hearing under this section. This is necessary because it promotes the efficient use of resources and may make hearings more accessible for dam owners. The dam owner must demonstrate good cause for converting the hearing. The presiding officer may convert the hearing to a written one upon a showing of good cause. Even when good cause is shown, the presiding officer will need to evaluate the factors considered for written hearing to determine if a written hearing is appropriate.

Subsection (g)

Purpose: The purpose of this subsection is to identify the ramifications should a dam owner or the Department fail to timely submit submittals by deadlines set by the presiding officer. This subsection explains that late submittals will not be considered and that the presiding officer will issue a final decision based on timely submittals. This subsection also creates an exception where the presiding officer will set a new deadline for submittals should a dam owner or the Department's failure to timely submit submittals was beyond their reasonable control or where it can be demonstrated that there was good cause for failing to meet submittal deadlines.

Necessity: This subsection is necessary to establish the consequences of failing to meet submittal deadlines. The administrative enforcement process is multi-stepped, and it is necessary to clearly convey the ramifications of failing to respond timely. It is also recognized that there may be situations that are beyond the reasonable control of the dam owner or the Department that prevent the timely submitting of submittals.

CCR Title 23. Article 7. Section 337.18.

Subsection (a)

Purpose: The amendment to this section is to clarify when a presiding officer continues a hearing.

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Necessity: As currently written, the subsection does not refer to section 337.16. This section does not apply to written hearing set under section 337.17 and it is necessary to refer to section 337.16.

CCR Title 23. Article 7. Section 337.20.

Subsection (a)

Purpose: To clearly state that there are specific hearing requirements that are applicable to in person hearings that do not apply to written hearings.

Necessity: The amendment is needed to align with the addition of section 337.17 and the requirements therein.

CCR Title 23. Article 7. Section 337.32.

Subsection (b)

Purpose: To clarify that hearings for liens will only be held when requested by the dam owner, specify how long a dam owner has to request a hearing upon notification by the Department, and to specify what information the dam owner is required to provide when requesting a hearing.

Necessity: Without this amendment and amendments to other subsections, it could be interpreted that the Department must hold a hearing before recording any property liens, regardless of whether the dam owner requests a hearing. The Department would incur unnecessary costs by holding hearings where the dam owner has no interest in attending.

Subsection (b)(1)

Purpose: To align with changes to subsection (b) by removing the hearing requirement and instead clarifying that the dam owner would be provided with thirty calendar days' notice before the Department may record a property lien.

Necessity: Without this amendment and amendments to other subsections, it could be interpreted that the Department must hold a hearing before recording any property liens, regardless of whether the dam owner requests a hearing. The Department would incur unnecessary costs by holding hearings where the dam owner has no interest in attending.

Subsection (b)(2)

Purpose: To clarify that the "notice" is the Department's "notice of intent to file a lien".

Necessity: To use language consistent with changes to subsection (b) and subsection (b)(1).

Subsection (b)(2)(F)

Purpose: To align with changes to subsection (b) and to clearly state that if a dam owner fails to request a hearing, they waive their right to a hearing.

Necessity: Without this amendment and amendments to other subsections, it could be interpreted that the Department must hold a hearing before recording any property liens, regardless of whether the dam

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owner requests a hearing. The Department would incur unnecessary costs by holding hearings where the dam owner has no interest in attending.

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Article 8. Adjustments to Application Fees

CCR Title 23. Article 8. Section 350.

Purpose: The addition of this section is to clearly note that the application fee schedule set in Water Code Section 6300 will be adjusted at the start of every fiscal year based on changes to the Consumer Price Index for Urban Consumers during the previous calendar year.

Necessity: To comply with Water Code section 6300 which requires the Department to develop regulations to annually adjust the application fee schedule by regulation.

CCR Title 23. Article 8. Section 360.

Subsection (a)

Purpose: The addition of this subsection is to provide a methodology for periodically updating the application fee schedule set in Water Code section 6300, subdivision (a), to ensure that application fees submitted to the Department align with the Department's costs related to application work.

Necessity: To comply with Water Code section 6300, subdivision (f), which requires the Department to develop regulations to periodically adjust the application fee schedule to align with costs incurred by the Department related to application work.

Subsection (b)

Purpose: To set at least the previous five years as the time period over which the Department will determine its costs related to applications fees submitted to the Department.

Necessity: While application fees may be submitted to the Department during one fiscal year, design reviews and construction oversight by the Department may span many fiscal years. To account for this, it is necessary to compare Department costs related to applications against application fees submitted over at least the previous five years.

Subsection (c)

Purpose: To set at least the previous five years as the time period over which the Department will determine how much in application fees were submitted to the Department.

Necessity: While application fees may be submitted to the Department during one fiscal year, design reviews and construction oversight by the Department may span many fiscal years. To account for this, it is necessary to compare Department costs related to application against application fees submitted over at least the previous five years.

Subsection (d)

Purpose: To state that the Department will compare application related costs against application fees over a five-year period and that the application fee schedule set in Water Code 6300, subdivision (a) will be adjusted if needed to align costs with application fees.

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Necessity: Periodically analyzing Department costs associated with application fees and application fees submitted is necessary to ensure that application fees cover the Department's costs associated with applications.

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Article 9. Application Fees Refunds

CCR Title 23. Article 9. Section 400.

Purpose: The addition of this section is to allow the Department to refund application fees if a dam owner requests that the application fee they submitted be refunded in cases where the Department determined that an application was not necessary.

Necessity: Water Code section 6300 allows the Department to refund application fees through regulations. Without regulations for refunding application fees, the Department does not have a means to provide refunds regardless of the circumstances, such as where an application and fee were submitted in error.

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

CCR Title 23. Article 10. Section 450.

Subsection (a)

Purpose: To provide the basis for the Department’s recognition of the need for approving a dam or reservoir project in phases, as some portions of a project can be constructed while other parts of a project may still be under design.

Necessity: Due to the scope, complexity, and size of some dam or reservoir projects, it can take many years to develop a final set of plans and specifications before starting construction. The Department recognizes that delaying the start of construction can in some cases lead to higher construction costs for dam owners. Phased approvals could allow portions of a project to move forward into construction earlier, saving the dam owner money.

Subsection (b)

Purpose: To note that the Department’s approval is necessary for all phases and that approval of one phase does not guarantee the approval of subsequent phases.

Necessity: To inform dam owners seeking phased approvals that subsequent phases are not guaranteed to be approved.

CCR Title 23. Article 10. Section 452.

The purpose of this section is to define terms as they are used in Article 10 and it is necessary to define these terms in order to assign a particular meaning.

Subsection (a)

Purpose: To define that “Department” means the Department of Water Resources.

Necessity: To provide clarity with regards regulation’s use of “Department” as there are many different departments within the state of California.

Subsection (b)

Purpose: To define the meaning of the term “dam owner” as it relates to the Water Code.

Necessity: It is necessary to define that this regulation only applies to owners of dams and reservoirs that fall under state jurisdiction for dam safety.

Subsection (c)

Purpose: To define the meaning of the term “dam or reservoir project.”

Necessity: To clearly note that this regulation is applicable to projects that require an application to be submitted to the Department for the construction of a new dam and reservoir, or the enlargement,

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alteration, repair, or removal of an existing dam or reservoir as there could be some projects associated with a dam or reservoir where the Department may not require an application.

Subsection (d)

Purpose: To define the meaning of the term “phase.”

Necessity: For the purpose of this regulation, it is necessary to define that “phase” applies to a portion of work to be completed under an application that can be fully designed and constructed prior to other portions of work to be completed under the same application taking place.

Subsection (e)

Purpose: To define the meaning of the term “phased approval.”

Necessity: For the purpose of this regulation, it is necessary to define “phased approval” is the Department’s written approval, allowing a dam owner to begin construction of a phase or work before the Department’s approval of all work to be performed under the application.

Subsection (f)

Purpose: To define the meaning of the term “requestor.”

Necessity: For the purpose of this regulation, it is necessary to define “requestor” as the dam owner or the owner’s representative.

CCR Title 23. Article 10. Section 454.

Purpose: This section provides the process as to how the Department will determine if a project is eligible, pursuant to section 458, should a dam owner request, pursuant to section 456, that their project be considered for phased approvals.

Necessity: This is necessary to explain how the Department’s process works, and how the regulations work together.

CCR Title 23. Article 10. Section 456.

Purpose: This section provides dam owners with the process that they must follow in order for the Department to consider their project for phased approvals.

Necessity: This section is necessary because it sets out the process that dam owners must follow to be considered.

Subsection (a)

Purpose: To clearly state that for a project to be considered for phased approvals by the Department, the dam owner must submit their request to the Department in writing. This section also provides a timeline for a Department decision on the request.

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Necessity: It is necessary for the dam owner to submit their request in writing to give it full consideration. It is also necessary to require that the Department notify the requesting dam owner of the Department's decision, within 180 calendar day to allow the dam owner time to plan.

Subsection (a)(1)

Purpose: To clearly state that the Department's acceptance of an owner's request for phased approvals does not guarantee that the project schedule provided by the dam owner will be met.

Necessity: To ensure that dam owners are informed that acceptance of phased approvals by the Department does not hold the Department or the dam owner to the schedule submitted as part of the dam owner's request for phased approvals.

Subsection (b)(1)-(4)

Purpose: To clearly state what the dam owner must submit to the Department when requesting phased approvals: a complete application package as required by CCR Title 23, section 310, at least 30 percent plans for the entire project, a detailed explanation of proposed phases, and a detailed schedule.

Necessity: To ensure that dam owners know what they must submit when requesting phased approvals to avoid delays, or rejection of their request for phased approvals, should an incomplete submittal be received by the Department.

Subsection (b)(4)(A)-(D)

Purpose: To clearly state what the dam owner must include in the detailed schedule, if applicable, when requesting phased approvals for: the design, review, and construction timeline for each phase; the California Environmental Quality Act (CEQA) process; any additional required permitting; and the process for obtaining or demonstrating water rights.

Necessity: To ensure that dam owners know what they must include in their detailed schedule to avoid delays, or rejection of their request for phased approvals, should an incomplete schedule be received by the Department.

Subsection (b)(5)

Purpose: To clearly state that the dam owner must describe why it is necessary to break up the dam or reservoir project into phased approvals.

Necessity: To ensure that dam owners know that they must demonstrate that breaking the dam or reservoir project into phases is necessary.

CCR Title 23. Article 10. Section 458.

Purpose: This section states that the Department's acceptance of a request for phased approvals is on a case-by-case basis and will be based on specific factors.

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Necessity: It is necessary to inform dam owners of what factors the department considers when considering whether to accept a dam or reservoir project for phased approvals on a case by case basis.

Subsection (a)

Purpose: To clearly state that one of the factors that the Department will consider is if phases are distinct and can be approved and constructed as independent components and that each phase can be approved with independent drawings and specifications that will not be dependent on a subsequent phase

Necessity: It is necessary to determine that an approved phase is safe as an individualized component and that the safety of an individualized component will not be rely upon later phases.

Subsection (b)

Purpose: To clearly state that one of the factors that the Department will consider is the ability to make design changes to future phases that are dependent upon previously approved phases.

Necessity: It is necessary to determine that the design changes to future phases can be made without modifications to previously approved and constructed phases which could detrimentally impact a project's schedule and cost.

Subsection (c)

Purpose: To clearly state that one of the factors that the Department will consider is CEQA and other permit requirements that could impact site access, schedule, and dam operations.

Necessity: As it is necessary to satisfy CEQA and obtain other required permits and approvals to begin construction, the Department will need to consider whether this can be accomplished prior to the first phase of work being approved.

Subsection (d)

Purpose: To clearly state that one of the factors that the Department will consider is if a project's funding source requires a phase of work to be initiated or constructed within a specified time to be eligible for the funding.

Necessity: As projects may have specific timelines for when the funding may be expended, it may be necessary to approve a project in phases so that the project continues to be eligible for the funding.

Subsection (e)

Purpose: To clearly state that one of the factors that the Department will consider is if a project to rehabilitate a dam or its appurtenances can be phased such that deficiencies can be independently addressed.

Necessity: As a dam may have multiple deficiencies, consideration needs to be given to phased approvals that allow deficiencies to be addressed where construction to address one deficiency does not adversely impact other deficiencies.

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CCR Title 23. Article 10. Section 460.

The purpose of this section is to clearly state the Department's phased approval process for the first phase and subsequent stages.

Subsection (a)

Purpose: To state the requirements that a dam owner must meet for the Department to approve the first phase of a project.

Necessity: It is necessary that the requirements be clearly stated so that dam owners know what is required prior to the Department approving the first phase of a project.

Subsection (a)(1)

Purpose: To state that the plans and specifications for the first phase must meet the requirements in section 304.

Necessity: Section 304 provides civil engineering requirements for plans and specifications; this subsection makes it clear that this requirement applies to the first phase.

Subsection (a)(2)

Purpose: To state the requirements that a dam owner must satisfy CEQA prior to the first phase of a project being approved.

Necessity: It is necessary that the CEQA be satisfied prior to the construction in conformance with Division 13 of the Public Resources Code.

Subsection (a)(3)

Purpose: To state the requirements that a dam owner must demonstrate evidence of water rights or that water rights are not legally required prior to approval of the first phase of a project.

Necessity: Prior to storing water behind a newly constructed dam or an enlarged existing dam, a dam owner may need legal permission under Part 2 of the Water Code to use a reasonable amount of water for a beneficial purpose.

Subsection (a)(4)

Purpose: To state the requirements that a draft inundation map has been submitted to the Department prior to approval of the first phase of a new dam or enlargement of an existing dam project.

Necessity: CCR Title 23 section 335.20 requires that an inundation map be submitted for any new or enlarged dam prior to the approval of any construction.

Subsection (a)(5)

Purpose: To state the requirement that the fee associated with the application submitted to the Department be paid in full prior to approval of the first phase of a project.

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Necessity: Water Code section 6304 requires that the application filing fee be paid in full prior to the Department's approval of an application.

Section (b)

Purpose: To state the plans and specifications for subsequent phases must be complete and signed and meet the requirements in CCR Title 23 section 304 prior to Department approval.

Necessity: CCR Title 23 section 304 provides civil engineering requirements for plans and specifications, this subsection makes it clear that this requirement applies to the approval of subsequent phases.

Section (c)

Purpose: To clearly state that the Department's approval of a phase of work excludes subsequent phases.

Necessity: It is necessary to clearly state that each phase must be approved separately.

CCR Title 23. Article 10. Section 462.

Purpose: To define the start of construction for estimating project costs as the start of construction for the first phase.

Necessity: Water Code section 6300 allows dam owners to update their project cost and pay additional application filing fees up until the date that construction commences, which would limit the potential for a further fee under Water Code section 6305. As such, it is necessary to define the start of construction for phased approvals.

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6. Economic Impact Assessment

Modifications to Article 2 are not anticipated to create any new economic impacts. Modifications to this article are to align this article with changes made to the Water Code by Senate Bill 122 and to provide direction regarding how dam owners address unlawfully constructed dams and reservoirs.

Modifications to Article 5 will not create new economic impacts on individuals or businesses. This article is only applicable to the 19 dams owned by the Department and regulated by DSOD. The modifications to this article will result in the Department's State Water Project covering DSOD's costs related to Director's Safety Review Boards which is conservatively estimated to be about \$100,000 per year. This would result in about \$100,000 less annually that DSOD would have to collect in annual fees paid by dam owners.

Modifications to Article 6 are not anticipated to create any new economic impacts. The most substantial change is the removal of the requirement that dam owners submit a hard copy of a technical memorandum; by only requiring the submittal of a pdf copy of the memorandum, this is expected to save dam owners the cost of printing, binding, and mailing these large documents.

Modifications to Article 7 are not anticipated to create any new economic impacts. The addition of paper hearings provides dam owners due process as part of enforcement efforts initiated by DSOD without the need to hold an in-person hearing. A paper hearing, versus an in-person hearing, would likely result in cost savings for businesses, individuals, and the Department as there would be no need for travel or to incur the costs associated with an oral hearing.

The addition of Article 8 would provide processes for annually and periodically updating the application fee schedule set in Water Code section 6300, subdivision (a) and as required by section 6300 subdivisions (e) and (f). While significant statewide adverse economic impacts are not anticipated, fees associated with applications will likely increase every year as the application fee schedule will be adjusted based on the Consumer Price Index for Urban Consumers. Application fees could also be adjusted, either up or down, should the Department determine that the amount the Department receives in application fees does not align with the Department's costs associated with applications.

The addition of Article 9 is not anticipated to create any new economic impacts. This article would provide a process for refunding application fees in cases where the Department has determined that an application is not necessary for proposed work.

The addition of Article 10 is not anticipated to create any new economic impacts. This new article would detail how the Department approves phases of large dam or reservoir projects, provided certain criteria is met, which allows construction flexibility which could save dam owners money by allowing a phase of a project to move forward while other portions of the project are being designed versus not allowing construction to start until the entire project is 100% designed (e.g., potentially delaying the project).

The Department has determined that the proposed regulations are not major regulations as defined in the Administrative Procedures Act.

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7. Documents Relied Upon

No documents were relied upon in the development of these regulations.

8. Benefits

The benefits of modifying Article 2 is that it will align the article with changes made to the Water Code by Senate Bill 122 and provide direction on how an owner of an unlawfully construction dam can address the dam's unlawful status. By providing clear direction as to how dam owners can address a dam's unlawful status, this will help the Department when taking enforcement actions against the owner of an unlawfully constructed dam who is not willing to address the dam's unlawful status.

The benefit of modifying Article 5 is that DSOD's costs related to Director's Safety Review Boards, which are only required for dams owned by the Department and regulated by DSOD, would not have to be passed on to other dam owners through application and annual fees.

The main benefit of modifying Article 6 is that dam owners would no longer need to submit a hard copy of a technical memorandum, saving dam owners the cost of printing, binding, and mailing these large documents. The Department would also no longer have to physically store these documents, allowing storage space to be repurposed.

The main benefit of modifying Article 7 is that travel related costs, and in-person hearing costs, would not been to be incurred by dam owners and Department staff by holding a paper hearing instead of holding an in-person hearing.

The addition of Article 8 is beneficial because it provides the Department with processes to annually and periodically adjust the application fee schedule set in the Water Code. Prior to Senate Bill 122, the application fee schedule was last updated in 1991 which resulted in application related work being subsidized by annual fees. Annually updating the application fee schedule using changes to the Consumer Price Index for Urban Consumers will help keep the fee schedule up to date with inflation. Periodically adjusting the fee schedule will also ensure that annual adjustments do not result in the over-collection or under-collection of application fees.

The addition of Article 9 benefits dam owners who submit an application and application fee where it is determined by the Department that an application is not needed for the proposed work. Article 9 would allow the Department to refund the application fee back to the dam owner provided that certain criteria are met.

The addition of Article 10 would benefit dam owners who have large and complex projects by providing a process for dam owners to follow when requesting phased approvals from the Department. Phased approvals would allow construction flexibility which could save businesses and individuals money by allowing a phase of a project to move forward while other portions of the project are being designed versus not allowing construction to start until the entire project is 100% designed (e.g., potentially delaying the project).

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9. Alternatives

Government Code section 11346.2 requires a state agency responsible for preparing a regulation to consider and evaluate reasonable alternatives to the proposed regulatory action and provide reasons for rejecting those alternatives. This section discusses alternatives evaluated and provides the reasons these alternatives were not included in the proposal. In the course of reviewing the modifications to existing regulations and proposed regulations, the Department considered three different potential alternatives

Alternative 1

No regulation.

Alternative 2

Only promulgating new regulations as required by Senate Bill 122.

Alternative 3

Modifying existing regulations and promulgating new regulations to align them with changes made to the Water Code by Senate Bill 122.

Consideration of Alternatives

Changes made to the Water Code by Senate Bill 122 required the Department to promulgate new regulations and resulted in existing regulations no longer being aligned with the Water Code. In developing this regulation package, existing dam safety regulations were reviewed, and it was determined that updates to existing regulations and new regulations were necessary to add clarity to DSOD's practices.

The first alternative was rejected by the Department because it would not address changes to the Water Code by Senate Bill 122. Water Code section 6300, subdivision (f) requires the Department to adopt, by regulation, a process to adjust the fees 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. Water Code section 6300, subdivision (f) requires the Department to annually adjust the application fee schedule to reflect changes in the Consumer Price Index for goods and services; however, a process was not provided so regulations are needed to provide a process. Water Code section 6300, subdivision (g) allows the Department to adopt, by regulation, a methodology for determining the criteria and process for filing fee refunds requested by an owner; without methodology in regulation, the Department cannot refund application fees. Also, Article 2 needed to be updated to align with the Water Code.

The second alternative was rejected by the Department because it would not address all changes made to the Water Code by Senate Bill 122. While Water Code section 6300, subdivision (f) does not specifically require the Department to adopt by regulation a process to annually adjust the application fee schedule to reflect changes in the Consumer Price Index for good, it was determined that best practice was to adopt a process by regulation. Water Code section 6300, subdivision (g) allows the Department to adopt, by regulation, a methodology for determining the criteria and process for filing fee refunds requested by an owner; without methodology in regulation, the Department cannot refund application fees. Also, Article 2 needed to be updated to align with the Water Code.

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The third alternative was initially accepted by the Department and served as the starting point for this regulation package. In preparing this regulation package, the Department determined that it would be beneficial to make additional modifications to existing dam safety regulations and promulgate new regulations to add clarity to DSOD's practices.

Alternatives Determination.

Based upon information considered, the Department has determined that no reasonable alternative considered or otherwise identified and brought to its attention would be more effective in carrying out the purpose for which this action is proposed, or would be as effective as and less burdensome to affected persons, including dam owners, than the proposed action or would be more cost effective to affected persons and equally effective in implementing the intent of Water Code, Division 3, Part 1.

10. Support for Determination of Adverse Economic Impact on Business

The Department does not anticipate a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states as a result of the proposed regulatory action. Also, the Department does not anticipate the creation of new businesses or elimination of existing businesses within the state or the creation or elimination of jobs within the state as a result of the proposed regulatory action.

This regulation package is procedural in nature and therefore will not create or eliminate businesses in California. The proposed modifications and additions to the regulations are designed to align Title 23 with recent changes to the Water Code and to update and add clarity to DSOD's practices. The proposed regulations do not make compliance with existing law more difficult or costly, and do not expand the application of the Dam Safety Program requirements. Furthermore, the proposed regulations enforce existing laws and do not create any new requirements that would increase or decrease the costs of doing business in California.

11. Consistency with Federal Law

The proposed regulations do not duplicate or conflict with federal regulations.