

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
Add Section 306 to Article 1
Add Articles 7 and 7.1
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Initial Statement of Reasons -Dam Safety Enforcement 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 1,240 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 jurisdictional dam owners within DSOD's regulatory oversight, and dam owners are ultimately responsible for operating and maintaining their dams in a safe manner in compliance with the Dam Safety Program requirements.

Senate Bill 92 (SB 92), signed by Governor Brown on June 27, 2017, provided for the implementation of enhanced enforcement provisions by the Department. Specifically, SB 92 authorizes the Department to impose property liens and punitive reservoir restrictions, and assess civil penalties of up to \$1,000 per day, per violation, on dam owners that fail to comply with any provision of Water Code, Division 3, Part 1, including any approval, order, regulation, or requirement of the Department issued or promulgated thereunder. In addition, SB 92 authorizes the Department to prepare Emergency Action Plans (EAP) for dams and recover the costs from the dam owner where the owner fails to comply sections 6160 and 6161 of the California Water Code.

The enforcement measures included in SB 92 are in addition to long-standing authority that Department has had, such as obtaining injunctive relief to obtain compliance with the Water Code or initiating actions (criminal) through the Office of the Attorney General to obtain compliance. The types of violations of dam safety requirements are varied and can range from a dam owner's failure to prepare emergency planning documents (e.g., an EAP) to failure to make repairs to a dam system to prevent a failure. When DSOD becomes aware of violations of the Dam Safety Program requirements, DSOD first sends directives or orders to dam owners to obtain compliance. While this is successful in the majority of cases, it is necessary to initiate formal enforcement actions in some cases to obtain full and timely

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compliance. The additional enforcement authority in SB 92 adds more options for the Department to use to ensure that dam owners comply with dam safety requirements.

The Department proposes to adopt regulations that provide a procedure for undertaking administrative enforcement actions for non-compliance with Water Code, Division 3, Part 1, including any approval, order, regulation, or requirement of the Department. The proposed regulations are intended to establish procedures for pursuing administrative enforcement actions for violations of Dam Safety Program requirements, provide procedures for conducting administrative hearings, and provide a methodology for calculating administrative civil penalties. Additionally, the proposed regulations expressly authorize the Department to request information from dam owners or suspected dam owners about the ownership, construction, operation, and maintenance of dams.

2. Problem Statement

Existing statutes authorize the Department to undertake administrative enforcement actions on any dam owner that fails to comply with Dam Safety Program requirements. The statutes that authorize these administrative enforcement actions do not expressly dictate the administrative process to be used, making it necessary to establish a regulatory process that is transparent, consistent, and equitable. Further, existing statutes authorize the imposition of a civil penalty of up to \$1,000 per day for each violation, but do not establish a framework or methodology for calculating penalties up to the \$1,000 per day per violation maximum. To ensure fair, effective, consistent, and transparent enforcement, it is necessary to provide a clear methodology for calculating penalties. Additionally, regulations are needed to clarify, interpret, and reinforce the statutes that expressly authorize the Department to request information from dam owners or suspected dam owners about the ownership, construction, operation, and maintenance of dams.

3. Overall Purpose

The overall purpose of these regulations is to establish a clear administrative enforcement process to address dam safety violations, which will protect public safety. The regulations will establish a clear and detailed administrative enforcement and hearing process, and, with respect to civil penalties, provide clear and consistent methodology on how the penalties are calculated. In general, this rulemaking action will help the Department implement a process to pursue administrative enforcement actions for dam owners that fail to comply with Dam Safety Program requirements. The proposed regulations will help assure dam owners that the process that governs administrative enforcement actions, including hearings, will be conducted in a fair and consistent manner. The proposed regulations will provide a more efficient mechanism for the timely resolution of violations under the statutes that authorize the administrative enforcement actions.

The proposed regulations provide a number of specific benefits, including transparency, fairness and consistency. The administrative process is set forth in great detail, ensuring that dam owners understand their rights and have an opportunity to present evidence in their defense. For instance, the proposed regulations inform dam owners how to contest an administrative enforcement action, request a hearing, and explain the hearing procedures. The proposed regulations also explain how administrative penalties will be calculated. The statutes that authorize the administrative enforcement

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actions are silent on these critical procedural requirements, and these regulations will make the process of undertaking these actions more transparent and fair.

In addition to the benefits described above, the proposed regulations provide more efficient procedures to timely address violations of the Dam Safety Program through the administrative hearing process rather than through the more costly civil litigation process. Through the implementation of the proposed administrative process, the Department anticipates significant benefits to public safety with improved compliance with dam safety requirements.

As to section 306, this regulation will clarify, interpret, and reinforce the Department's authority to obtain information about dams or structures that may meet the statutory definition of a dam and, therefore, be subject to the Department's jurisdiction, and help determine compliance with Water Code, Division 3, Part 1.

4. Necessity and Purpose of each Provision

CCR Title 23. Article 1. Section 306. Information Request

This section specifies that dam owners or persons suspected of being a dam owner must provide information about dams, or structures that may meet the definition of a dam, as those new terms are defined in the section. This section also specifies that dam owners and suspected dam owners are responsible for the costs of providing this information.

Subsection (a)

Purpose: The purpose of this subsection is to specify that information requests from the Department may be directed to a dam owner, or persons suspected of meeting the definition of a dam owner, regarding a dam or structures that meet the definition of a dam. The need for information arises in the context of enforcement actions, and for general implementation of the Dam Safety Program.

Necessity: This subsection is necessary because whether a structure meets the definition of a dam and whether a person meets the definition of an owner is dependent on facts, which trigger the need to be able to gather relevant information. It is necessary to clarify that these requests may be made of "suspected dam owners" about "suspected dams" because it is necessary to review relevant information to determine if a structure meets the legal definition of a dam, and if a person meets the statutory definition of an owner.

Subsection (b)

Purpose: The purpose of this subsection is to define/clarify terms used in Section 306 – "suspected dam" and "suspected dam owner" and to describe that the Department will base information requests on available information.

Necessity: This subsection is necessary to define new terms for the purpose of clarity, and accounts for situations where DSOD needs information to make threshold determinations about whether a structure is a "dam" and, therefore, subject to its jurisdiction, and if a person meets the definition of a "dam owner," and responsible for complying with Dam Safety Program requirements.

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Subsection (c)

Purpose: The purpose of this subsection is to provide that dam owners and suspected dam owners are responsible for the costs of providing information requested under this section.

Necessity: This subsection is necessary to clearly establish that it is the dam owner or suspected dam owner that must cover the costs associated with providing information.

CCR Title 23. Article 7. Section 337. Administrative Enforcement

Purpose: The purpose of this section is to identify the scope and authority for the administrative enforcement actions that are subject to the process set forth in this article, and to highlight that the Department will coordinate with the Governor's Office of Emergency Services on administrative enforcement involving the emergency planning aspect of California's Dam Safety Program.

Necessity: The Department has other enforcement tools, such as civil litigation or referring matter to local district attorney's offices. This section is necessary to clarify that the process outlined in this article governs administrative enforcement rather than other methods of enforcing Water Code, Division 3, Part 1. It is also necessary to clarify that violations, which can lead to administrative enforcement, can arise out of violations of Water Code, Division 3, Part 1, implementing regulations, or any Department approvals, orders, requirements or conditions issued under Water Code, Division 3, Part 1.

CCR Title 23. Article 7. Section 337.2 Definitions

Purpose: The purpose of this section is to provide definitions of key terms used throughout the proposed regulation.

Necessity: This section is necessary because it defines and clarifies terms and abbreviations used throughout the proposed regulations. This section is necessary to improve clarity and the overall understanding of the regulations for those impacted by them by making terms specific.

CCR Title 23. Article 7. Section 337.4 Notice of Violation

Purpose: The purpose of this section is to provide guidance as to when DSOD would issue a notice of violation (NOV) to a non-compliant dam owner.

Necessity: This section is necessary to provide clear guidance on when a NOV would be issued to a dam owner and what is to be included in the NOV.

CCR Title 23. Article 7. Section 337.6 Department Preparation of Emergency Action Plan; Reimbursement by Dam Owner

Purpose: The purpose of this section is to specifically allow for the Department to contract out work for the preparation of EAPs, whole or part, if a dam owner fails to comply with a NOV issued by DSOD that requires the dam owners to prepare and submit an acceptable EAPs.

Necessity: It is necessary to specify that the Department may take this action after a dam owner fails to comply with an NOV and to clarify that the Department may contract this work out instead of doing the work within the Department.

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CCR Title 23. Article 7. Section 337.8 Administrative Complaint

Subsection (a)

Purpose: This subsection provides that an administrative complaint may be issued for failure to comply with an NOV, identifies the types of enforcement measures that may be imposed (e.g., monetary penalties, reservoir restrictions), specifies that the complaint may also seek recovery of all costs incurred by DSOD to bring the enforcement action, up until the time that the dam owner requests a hearing.

Necessity: Subsection (a) is necessary to clarify what triggers DSOD's issuance of an administrative complaint and the ramifications of continued non-compliance, e.g., penalties, reservoir restrictions. This section is also necessary to allow DSOD to seek recovery of costs incurred by DSOD to undertake the enforcement action. The Dam Safety Program is solely supported by fees imposed on dam owners, and the Department has determined that it is appropriate to allow DSOD to seek recovery of some staff costs (those incurred by DSOD up until the time a request for hearing is made) from the subject dam owner, rather than to have these costs absorbed by unrelated dam owners. The Department also determined that dam owners should not be discouraged from requesting a hearing and challenging an administrative complaint, and that some dam owners may in fact be discouraged if they are concerned about extensive staff costs and the potential to reimburse the Department. Thus, limiting the ability to seek staff costs to those incurred before a hearing is requested was necessary to remove any dam owner disincentives to exercising their due process rights.

Subsection (b)

Purpose: This subsection specifies the components of an administrative complaint. Specifically, this subsection requires the administrative complaint to:

- Allege the activity or failure to act that constitutes a violation (Subsection (b)(1))
- Include the provision of law authorizing the action (e.g., monetary penalty, reservoir restriction) sought (Subsection (b)(2))
- State the amount of any administrative civil penalty proposed, property liens, or costs for which DSOD is seeking to recover (Subsection (b)(3))
- State that the dam owner's failure to request a hearing within twenty days constitutes a waiver of the right to a hearing, except for where a complaint seeks revocation of a certificate of approval, and a hearing, for the revocation issue only, will be scheduled notwithstanding the absence of a timely request (Subsection (b)(4))

Necessity: Subsection (b) is necessary to clarify the requirements of an administrative complaint, including the requirement that clearly establishes what the dam owner must do to challenge the administrative complaint and request a hearing.

Subsection (c)

Purpose: The purpose of this subsection is to allow DSOD to issue an administrative complaint without having first issued a NOV, in cases where the preliminary step of issuing an NOV would result in unnecessary delay.

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Necessary: The types of violations and underlying circumstances are varied, for example some violations may present risks if not corrected in an expeditious manner. In these cases, it is necessary to be able to advance the enforcement process as quickly as possible, while still providing the dam owner with adequate notice of actions and with the opportunity to request a hearing. In most cases, the phased administrative enforcement process, starting with the issuance of an NOV, will be implemented. However, there may be some violations that will justify bypassing the NOV process.

CCR Title 23. Article 7. Section 337.10 Assessment of Administrative Civil Penalty

Subsection (a)

Purpose: The purpose of Subsection (a) is to provide clarity on how to calculate an administrative civil penalty, as well as to inform the regulated community of the circumstances which the Department will consider when calculating the civil penalty amount.

Necessity: Water Code section 6432 authorizes the Department to impose a civil penalty of up to \$1,000 per day per violation, but that section does not identify the factors to be considered when setting the penalty amount, up to the statutory maximum. Subsection (a) is necessary to establish criteria that will be considered.

Subsection (b)

Purpose: The purpose of Subsection (b) is to clarify that administrative penalties will be calculated using the methodology in Article 7.1, and that the penalty cannot exceed the statutory maximum.

Necessity: Article 7 authorizes the Department to undertake a variety of actions to achieve compliance with the Dam Safety Program requirements, and the pursuit of administrative civil penalties is one of them. Where the Department pursues administrative civil penalties, it will utilize the methodology set forth in Article 7.1, and it is necessary to refer to that process in Article 7. It is also necessary to clarify that the penalty may not exceed the statutory maximum, despite the factors to be considered under Subsection (a) and the methodology in Article 7.1.

Subsection (c)

Purpose: The purpose of Subsection (c) is to clarify that monetary penalties that are established by statute will not be governed by the factors and criteria contained in Section 337.10.

Necessity: Water Code section 6428 establishes a ten-percent penalty for failure to pay fees in a timely manner. Statutory provisions supersede the penalty-calculation methodology developed through administrative regulations, and Subsection (c) is necessary to clarify this point and avoid confusion.

CCR Title 23. Article 7. Section 337.12 Request for a Hearing; Waiver

Subsection (a)

Purpose: The purpose of Subsection (a) is to establish a time period within which a dam owner must contest an administrative complaint and request a hearing. This subsection also requires the dam owner to submit a statement of defense and specifies the required components of the statement of defense.

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Necessity: Subsection (a) is necessary to establish clear deadlines for challenging an administrative complaint and to identify the information that the dam owner must provide when contesting an administrative complaint.

Subsection (b)

Purpose: The purpose of subsection (b) is to explain the ramifications of failing to contest a complaint and request a hearing as provided in subsection (a), and to allow an extension of the deadline in subsection (a) for good cause.

Necessity: Subsection (b) is necessary to set deadlines as that will indicate whether the dam owner intends to challenge the complaint, or if the complaint will go unchallenged, with the Department issuing an order based on the administrative complaint. This section is also necessary to provide an extension of the 20-day requirement to request a hearing upon a showing of good cause.

Subsection (c)

Purpose: The purpose of Subsection (c) is to provide special hearing requirements when DSOD proposes to revoke a certificate of approval. A certificate of approval is the approval that authorizes the use of dam and storage of water in the reservoir. This subsection provides that when DSOD seeks to revoke a certificate of approval, a hearing will automatically be scheduled to consider revocation of the certificate, regardless of whether the dam owner requests a hearing. This section also provides that unless a hearing is requested by a dam owner, then the dam owner waives the right to a hearing with respect to other matters and relief sought in the administrative complaint.

Necessity: Water Code section 6357.4 requires the Department to hold a hearing before any certificate of approval is revoked, to provide 20-day notice of the hearing to holder of the certificate of approval (dam owner), and allow interested parties an opportunity to present views and objections on the proposed revocation. This hearing is required regardless of whether the dam owner requests a hearing, and so it is necessary to address the special, statutory hearing requirements for enforcement cases that involve proposed revocation of certificates of approval.

CCR Title 23. Article 7. Section 337.14 Presiding Officer; Hearing Procedure

Subsections (a) and (b)

Purpose: The purpose of Subsections (a) and (b) is to identify the steps that will take place when a dam owner requests a hearing and specify who may conduct a hearing when the dam owner requests a hearing.

Necessity: Subsection (a) establishes that a presiding officer will be appointed to exercise powers to provide a hearing in response to a contested complaint. This subsection is necessary to establish that an officer to preside over a hearing will be designated, and the presiding officer will exercise all powers related to the conduct of the hearing.

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Subsection (b) states that the Department may designate an administrative law judge from the Office of Administrative Hearings (OAH) to serve as a presiding officer or other persons within the Department to serve as a presiding officer, but only if the person was not the Department official who issued the complaint in the case and did not serve as an investigator, prosecutor, or advocate in any stage of the enforcement proceeding. Subsection (b) is necessary to interpret and make specific who the Department may designate as a presiding officer to conduct hearings, and that the Department has the ability to utilize a presiding officer from within the Department or from OAH. The California Administrative Procedures Act (APA) and due process principles require that the hearing officer be separated from the investigative process. Subsection (b) is necessary to assure the regulated community that a separation of functions exists between the presiding officer who is the trier of fact and final decision maker, and the Department employees who serve as investigators or prosecutors in the case. This separation of functions is required by law. See *Morongo Band of Mission Indians v. State Water Resources Control Board* (2009) 45 Cal. 4th 731.

Subsection (c)

Purpose: Subsection (c) provides that the hearing procedures in the APA will apply when a hearing is presided over by an administrative law judge (ALJ) from OAH. The proposed regulations allow the Department to designate a presiding officer from OAH or from within the Department. It is expected that complex enforcement cases or those presenting potential conflicts of interest will proceed using an ALJ from the OAH as the presiding officer. When this occurs, the process set forth in the APA will generally be more suitable, and it will be more efficient for the presiding officer/ALJ to conduct the hearing in accordance with the procedures the ALJ is most familiar with, i.e., the APA.

Necessity: The authorizing statutes do not specify a hearing procedure. It is, therefore, necessary to specify the hearing procedures that will apply to a hearing, and, in particular, the hearing procedures that will apply when an ALJ from OAH is serving as a presiding officer.

Subsection (d)

Purpose: The purpose of Subsection (d) is to specify that the hearing procedures set forth in Article 7 of the proposed regulations will apply when the hearing is conducted by a presiding officer from within the Department (rather than an ALJ from the Office of Administrative Hearings).

Necessity: Subsection (d) is necessary because the authorizing statutes do not specify a hearing procedure. The proposed regulations allow the Department to designate a presiding officer from within the Department to preside over a hearing, and it is necessary to clearly indicate the hearing procedures that will apply for these hearings. The hearing procedures set forth in Article 7 have procedures and safeguards that are built into the APA, but are expected to be more accessible and understandable by most dam owners. DSOD regulates a wide variety of dams and dam owners, ranging from private landowners to large utilities. It is necessary to provide a hearing procedure that is accessible so that dam owners that are not familiar with these types of proceedings are encouraged to engage in the process.

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Subsection (e)

Purpose: The purpose of Subsection (e) is to reinforce that hearings will proceed in full consideration of due process requirements and fairness to the parties.

Necessity: The proposed regulations allow the Department to select a hearing officer that is most appropriate for the subject administrative action. For hearings that are not conducted by OAH, the regulations allow the presiding officer to waive or modify procedures set forth in the proposed regulations. Subsection (e) is necessary to emphasize that the Department's and presiding officer's decisions must be made in consideration of due process and fundamental fairness to the parties.

CCR Title 23. Article 7. Section 337.16 Notice of Hearing (Non OAH Cases)

Subsection (a)

Purpose: The purposes of Subsection (a) are to specify that hearings conducted by a Department official will be scheduled in accordance with Section 337.16, and to establish that these hearings will be held in Sacramento unless there is a good cause to hold the hearing in an alternate location or to schedule a virtual hearing.

Necessity: This subsection is necessary to establish the general hearing location, and authorize the presiding officer to select a different venue or conduct a virtual hearing where there is just cause to do so.

Subsection (b)

Purpose: The purpose of Subsection (b) is to establish that a hearing notice must be served on the dam owner at least 30 days before the hearing, except for certain situations. Specifically, the Department may provide shorter notice (but at least 10 days) if the violation involves an unreasonable risk to public safety and only a 20-day notice if the sole purpose of the hearing is to revoke a certificate of approval as authorized by Water Code section 6357.4.

Necessity: This provision is necessary because the authorizing statutes do not have procedures governing the hearing process, including the length of notice that must be given to dam owners when holding a hearing. It is also necessary to establish a general notice timeframe, and also a shortened notice period if the violation involves public safety risks, which would warrant an expedited process. Also, Water Code section 6357.4 provides hearing requirements for actions to revoke certificates of approval, including at least a 20-day notice of a hearing. It is necessary to clarify that the 20-day notice requirement applies if the Department's sole action is to revoke a certificate of approval.

Subsection (c)

Purpose: The purpose of Subsection (c) is to provide a shortened notice period for a hearing in the event a violation poses an unreasonable risk to public safety or welfare. The shortened time period is at least 20 days for cases that involve a revocation of a certificate of approval and at least 10 days for all other cases.

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Necessity: This subsection is necessary because some violations could pose public safety risks, and it may be necessary to proceed with the administrative hearing process in an expedited manner, while still providing dam owners with due process. It is also necessary to specify that at least 20 days is required for cases involving revocations of a certificate of approval to comply with Water Code section 6357.4.

Subsection (d)

Purpose: The purpose of this subsection is to establish that a shortened notice period (at least 20 days versus a minimum of 30 days) is required when the sole purpose of the hearing is to consider revocation of a certificate of approval.

Necessity: This subsection is necessary to track the provisions in the Water Code, which requires a minimum of 20-day notice of a hearing where the Department will be considering revocation of a certificate of approval. The special, 20-day provision will only apply if revocation of the certificate of approval is the only administrative enforcement action that is being sought or if the dam owner waives its right to a hearing for other administrative enforcement actions, such as the imposition of monetary penalties and reservoir restrictions.

Subsection (e)

Purpose: The purpose of Subsection (e) is to establish basic minimum requirements of a notice of hearing. Specifically, the notice must include the date, time, and place of the hearing; a statement that the hearing will be governed by Article 7; a statement that if the dam owner does not proficiently speak or understand English, the dam owner may request language assistance. Subsection (e)(3) also establishes timelines for requesting language assistance. This subsection also requires that the hearing notice be accompanied by a copy of the administrative complaint and that the notice indicate if parties are required to pre-submit materials as described in section 337.20, subsection (b).

Necessity: Subsections (e)(1)-(3) are necessary to ensure that dam owners are informed of the hearing date and place, how to request language assistance, and the process that will govern the hearing. Subsection (e)(4) is necessary to enclose a copy of the administrative complaint that was earlier served on the dam owner as that document contains substantive information concerning the alleged violations of dam safety requirements. It is important to notify parties of the pre-submittal requirements as early as possible, and subsection (e)(5) is necessary to emphasize that any pre-submittal requirements are included in the hearing notice.

Subsection (f)

Purpose: The purpose of Subsection (f) is to identify the ramifications of a dam owner's failure to appear at a hearing. This subsection explains that failure to appear at the hearing constitutes a waiver of the request for hearing, and the Department is authorized to issue a final order that imposes the administrative remedies proposed in the administrative complaint. This subsection also creates an exception where the dam owner's failure to appear was beyond the reasonable control of the dam owner, in which case the hearing will be rescheduled and the Department is not authorized to issue a final order as a result of the dam owner's failure to appear at the initially-scheduled hearing.

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Necessity: This subsection is necessary to establish the consequences of failing to appear at a scheduled hearing. The administrative enforcement process is multi-stepped, and it is necessary to clearly convey the ramifications of failing to respond or pursue the process. It is also recognized that there may be situations that are beyond the reasonable control of the dam owner that prevent the dam owner from attending the scheduled hearing. In these cases, or where the dam owner otherwise demonstrates good cause for failing to appear, it would be inequitable to preclude such a hearing and for the Department to issue an order without providing another opportunity for a hearing. This subsection is necessary to give the dam owner another opportunity for a hearing in these situations, notwithstanding the failure to appear at the initially scheduled hearing.

CCR Title 23. Article 7. Section 337.18 Continuance of Hearing

Subsection (a)

Purpose: The purpose of 337.18 is to set forth the procedures for continuing a hearing and establish the consequences of failing to appear at a rescheduled hearing.

Necessity: Subsection (a) specifies that the presiding officer may, for good cause on his or her own motion or upon the request of any party, continue the hearing to another time. This provision is necessary because the authorizing statutes do not address issues related to the continuance of a hearing. Subsections (a)(1)-(a)(3) include steps that a party must follow to request a continuance of a hearing. These provisions provide necessary specificity on the procedures to change the date of the hearing or postpone a hearing. Subsection (a)(4) specifies that the presiding officer must give written notice of the time and place of the hearing when a continuance is ordered. Subsection (a)(5) specifies the time period in which the presiding officer must notify parties of continuances in situations where the presiding officer is continuing a hearing on the presiding officer's own motion. These provisions are necessary to establish timely communication of the presiding officer's decision on the continuance of hearings.

Subsection (b)

Purpose: The purpose of Subsection (b) is to explain what happens if the dam owner fails to appear at the continued hearing.

Subsection (b) is necessary to establish the consequences of failing to appear at a continued hearing. Specifically, if a dam owner fails to appear at a continued hearing, then the Department is authorized to issue a final administrative order that imposes administrative remedies that were sought in the administrative complaint. This subsection creates an exception where the dam owner demonstrates good cause, and if good cause is shown, the hearing will be rescheduled and the Department will not be authorized to issue a final order based on failure to appear at the continued hearing.

CCR Title 23. Article 7. Section 337.20 Conduct of Evidentiary Hearing

Subsection (a)

Purpose: This subsection specifies that hearings will be conducted in a manner deemed most suitable to ensure fairness to the parties and to secure all relevant evidence necessary to make a decision without unnecessary delay.

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Necessity: This subsection is necessary to reinforce the overall purpose of the hearing procedures.

Subsection (b)

Purpose: This subsection specifies that pre-submission of written materials may be required before hearings and provides requirements for pre-submitting materials. This subsection also requires that pre-submittal requirements, if required, must be included in the hearing notice as follows:

1. Information about witnesses and their expected testimony.
2. Written testimony and exhibits may be required to be submitted to the Department and other parties.
3. Provision that witnesses providing written testimony must appear at the hearing and affirm that the testimony is true.
4. A provision that failing to comply with pre-submittal requirements may result in the presiding officer refusing to admit the testimony or exhibits into evidence.
5. Rebuttal testimony will not generally be required to be submitted in writing or before the start of the hearing.

Necessity: This subsection is necessary to provide the discretion to require the pre-submission of materials. Submitting materials before a hearing allows parties and the presiding officer with an opportunity to thoroughly review materials in a timely manner and prepare for the hearing. This includes witness information, testimony, and exhibits described in subsections (b)(1) and (2). The presiding officer has significant control over the conduct of the hearing, but it is necessary to establish general procedures (subsections (b)(3)-(5)), and to require that these are included in hearing notices so that the dam owner and other parties and interested persons understand the hearing process.

Subsection (c)

Purpose: The purpose of this subsection is to identify parties to typical enforcement actions, establish that parties and other interested persons may provide testimony for the hearing, and to establish the general order of allowing for testimony at the hearing.

Necessity: Enforcement cases will generally involve at least two parties. Enforcement actions and hearings will necessarily involve DSOD (Subsection (c)(1)) and the dam owner (Subsection (c)(3)). In cases involving violations of EAP requirements, Cal OES (Subsection (c)(2)) will be considered a party as they implement that part of the emergency planning program. There may be other persons interested in a dam owner's violation as well, including those with a direct interest such as a downstream property owner (Subsection (c)(4)) or other persons or entities who are not directly impacted, but nonetheless have an interest (Subsection (c)(5)), such as dam safety organizations, local agencies where the dam is located. This subsection is necessary to identify typical parties or interested persons and to establish a general order of testimony, which provides clarity about the process. This subsection also specifies that the presiding officer may alter the order if the presiding officers determines that a different order will be more efficient based on the facts and circumstances of the case.

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Subsection (d)

Purpose: This subsection authorizes the presiding officer to allow rebuttal testimony.

Necessary: Violations of Dam Safety Program requirements vary, and the complexity of factual matters and cases will vary as well. In some cases, the presiding officer may determine that rebuttal testimony is necessary or beneficial, so it is necessary to expressly provide the presiding officer with the discretion to allow it.

Subsection (e)

Purpose: Subsection (e) allows the presiding officer to allow cross-examination at a hearing and allows the presiding officer and those assisting the presiding officer to ask questions at any time. This subsection also provides that the presiding officer may close the public testimony portion of the hearing when a reasonable opportunity to present questions and points have view have been made.

Necessity: It is critical to obtain all relevant evidence at the hearing, and sometimes it will be necessary to allow cross-examination in order for the presiding officer to obtain all relevant and credible evidenced needed to make a decision. Similarly, the presiding officer and advisors may themselves need to ask questions to elicit relevant information. Subsection (e) is necessary to establish that cross examination may be allowed by the presiding officer. This subsection is also necessary to specifically authorize the presiding officer and persons advising the pressing officer to ask questions at any time and to close the public testimony portion of the hearing when parties and interested persons have had the opportunity to present their cases or points of view and ask relevant questions.

Subsection (f)

Purpose: This subsection provides that the hearings need not be conducted in accordance with technical rules of evidence (which would apply in civil judicial cases), that relevant evidence will be considered if credible, and explains the acceptable use of hearsay evidence. The subsection also explains that presiding officers can take official notice of facts, similar to how courts can take judicial notice in court settings.

Necessity: Decisions that are issued must be based on credible and reliable evidence. The APA and other administrative hearing procedures established by state agencies allow for a relaxation of the technical rules of evidence so that the parties do not have to navigate complex evidence rules. This subsection follows that model, and it will make the hearing process more accessible to parties involved, while still maintaining criteria that ensures that evidence is reliable and credible. This subsection is necessary to specify the evidentiary rules for these hearings. Courts also take judicial notice of certain facts (facts commonly known by persons without having to establish its existence), and it is beneficial for a presiding officer to have similar authority with respect to these administrative hearings. This subsection is necessary to provide the presiding officer with that authority.

Subsection (g)

Purpose: This subsection allows the presiding officer to establish reasonable time limits for presentations and to require persons to consolidate comments to avoid repetition.

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Necessity: It is the presiding officer's role to conduct orderly, efficient hearings to obtain relevant and reliable evidence on which the ultimate decision must be based. In that capacity, the presiding officer must ensure that testimony and evidence is focused and relevant to the issues at hand. This subsection is necessary to provide the presiding officer with the authority to conduct efficient and focused hearings.

CCR Title 23. Article 7. Section 337.22 Service

Purpose: This section provides that the service requirements in Section 337.22 apply whenever the regulations in Article 7 require service on a party. Identifies the acceptable forms of service.

Necessity: The authorizing statutes do not specify service requirements. It is necessary to establish requirements for service to ensure that dam owners and other parties receive notice and other documents in a reliable and timely manner. Since every case is different, and different service methods may be more effective or efficient, it is necessary to provide several different processes for service: mail through the US Postal Service, leaving the document at a residence or business, electronically if the dam owner agrees in writing, and personal service. The regulations require that at least one of the methods be utilized, but nothing precludes the use of several methods in a case in an effort to meet the goal of providing timely notice or service of documents.

CCR Title 23. Article 7. Section 337.24 Settlement

Purpose: The purpose of this section is to clearly provide that the parties to an enforcement action may settle at any time before an order becomes final. This section also provides that the Department, or the presiding officer if a hearing was requested, shall issue an order that includes the terms of the settlement agreement.

Necessity: The authorizing statutes are silent concerning the resolution of contested cases through settlement. This section is necessary to specify that a settlement may be reached at any time before an order becomes final. This section is also necessary to specify that if a hearing was requested, and the matter was subsequently settled, then the Department or the presiding officer shall issue an order that includes the terms of the settlement agreement.

CCR Title 23. Article 7. Section 337.26 Ex Parte Communications

An ex parte communication occurs when one side of a dispute has a private communication with the person who makes a decision in the case without an opportunity for the other side to participate in the communication. Details regarding ex parte communication are not provided in the authorizing statutes, and so this section sets forth the rules governing ex parte communications for administrative enforcement actions.

Subsection (a) specifies that while a proceeding is pending no communications are allowed by any of the parties or other interested persons to the presiding officer or persons advising the presiding officer without notice and opportunity for all parties to participate in the communication. This provision is necessary to ensure transparency and fairness in pending proceedings. This subsection specifies that

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the ban on ex parte communications does not preclude a party's right to make statements or communicate with the presiding officer at the hearing and made on the record as all parties are present or had the opportunity to be present at the hearing. The prohibition on ex parte communications is typically triggered when a proceeding is pending, and it is necessary to specify that the proceeding is pending (and therefore the ex parte communication prohibition) when the notice of a hearing is issued.

Subsection (b)(1) and (2) specify when communications with a presiding officer and those advising the presiding officer are permissible. These provisions are necessary to inform parties when communications with the presiding officer or advisors to the presiding officer are permissible. Subsections (3) and (4) specify procedures to disclose the content of prohibited ex parte communication and provide all parties an opportunity to comment on the communication. These provisions are necessary to fully disclose information that may constitute improper ex parte communications. Subsection (b)(5) provides that the receipt of a communication in violation of this section may be grounds for disqualification of the presiding officer. This provision is necessary to ensure the dam owner's due process and fairness to all parties.

CCR Title 23. Article 7. Section 337.28 Decision

Purpose: The purpose of Section 337.28 (a) and (b) is to specify the process for issuing a decision following a hearing, and to identify the types of actions that the decision may order.

- Subsections (a)(1) – (4) specify the types of actions that may be included in a decision. This is beneficial because it makes the preparation of the decision and the decision-making process more transparent to dam owners, other parties and interested persons.
- Subsection (a)(1) specifies that the decision may include the civil penalty proposed in the administrative complaint, or the decision may modify the amount, or not include an administrative penalty at all. This provision is necessary because the authorizing statutes are silent on these procedural issues.
- Subsection (a)(2) specifies that with respect to reservoir restrictions, the decision may concur with the restriction proposed in the administrative complaint, modify the restriction, or refuse to impose a restriction at all. This provision is necessary because the authorizing statutes are silent on these procedural issues.
- Subsection (a)(3) specifies that with respect to certificate of approvals, the decision may revoke the certificate or amend the terms and conditions of the certificate by revoking the certificate and issuing a new certificate of approval with revised terms and conditions. This provision is necessary to track the language of Water Code section 6357.4 and include it with the other actions that the Department is authorized to take.
- Subsection (a)(4) lists other actions or remedies that the decision may order or include. Subsection (a)(4)(A) allows the decision to include the reimbursement of costs to the State (incurred by the state up until a hearing is requested) to bring the action. This is necessary to clearly provide that reimbursement of these costs may be ordered in a decision.
- Subsection (a)(4)(B) authorizes the decision to include a provision for reimbursement to the Department for the preparation of EAPs, including maps. The authorizing statutes allow the Department to prepare EAPs and maps when the dam owner fails to do so, but the statutes are

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silent with respect to the process for recovering these costs. This provision is necessary to specify that the decision may include these costs.

- Subsection (a)(4)(C) authorizes the issuance of property liens on land owned by the dam owner that is the subject of the enforcement action. The authorizing statutes allow the imposition of property liens when dam owners fail to comply with any provision of Water Code, Division 3, Part 1, but the authorizing statutes are silent with respect to the process for imposing property liens. This subsection is, therefore, necessary to identify the process that will be used to impose property liens.
- Subsection (a)(4)(D) allows the decision to order the dam owner to pay fees and penalties and interest that the dam owner may be subject to by statute. There are provisions in the authorizing statutes that expressly require the dam owner to pay penalties and interest on the late payment of fees. See Water Code section 6428. Failure to pay fees may be the subject of an administrative enforcement action. Since the statutes are silent on the process for recovering interest in the context of an administrative enforcement action, it is necessary to provide process whereby the Department can recover these sums as part of an administrative enforcement action.
- Subsection (a)(4)(E) provides that the decision may order any other appropriate action that will facilitate or ensure compliance with Water Code, Division 3, Part 1. Every administrative enforcement matter involves a unique set of facts and circumstances. The goal of the enforcement regulations is to obtain compliance with Dam Safety Program requirements for the safety of the public. This provision is necessary to establish that the decision may take other appropriate action within their authority under Water Code, Division 3, Part 1, to obtain compliance with Dam Safety Program requirements.
- Subsection (b) provides that the presiding officer shall issue the final decision for the Department and that the decision shall be served on all parties. This provision is necessary to clarify that the presiding officer's decision and order is final, which is important for purposes of judicial review and overall awareness. Without this subsection it may be unclear whether the order is final after the presiding officer issues the decision, or whether the Director must first approve or adopt the decision of the presiding officer. Subsection (b) also provides that the final decision shall be served on all the parties. This provision is necessary to clarify that the final decision must be served upon all the parties to the action, including the dam owner.

Necessity: The authorizing statutes do not identify the timing in which the Department must issue a decision after a hearing nor do they specify the requirements of a Department decision after a hearing. Subsection (a) provides that the presiding officer must issue a decision within 180 days of the conclusion of the hearing. This is necessary to establish a deadline by which the presiding officer will issue a decision after the hearing. Subsection (a) also specifies that the decision shall include findings of fact and conclusions. This provision is necessary to specify that a decision shall be based solely on the evidence in the record. Subsection (b) is necessary to establish that the decision must be served on the parties.

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CCR Title 23. Article 7. Section 337.30 Payment of Penalty, Interest, or Cost

Purpose: The purpose of this section is to specify the process for payment of monetary sums, and to specify where the sums will be deposited. This section requires that any administrative civil penalties, interest, or other costs imposed on the dam owner shall be due and payable to the Department within 60 calendar days after a final order is issued. This section also specifies that all payments and monetary sums recovered shall be deposited into the Dam Safety Fund established by Water Code section 6308.

Necessity: The authorizing statutes allow the Department to recover penalties, interest and costs, but do not establish a process for doing so. This section is necessary to establish a process and timeframe for paying monetary amounts that have been determined due. This provision is also necessary to clarify that the monetary sums shall be deposited into the Dam Safety Fund, consistent with Water Code section 6308.

CCR Title 23. Article 7. Section 337.32 Property Liens

Subsection (a)

Purpose: The purpose Subsection (a) is to establish that the Department may record a lien with the county recorder, and it identifies the types of costs that may be the subject of a property lien.

Necessity: Subsection (a) provides that property liens may be imposed on dam owners that fail to comply with any provisions of Water Code, Division 3, Part 1. This is necessary to clarify the general authority that liens may be levied in response violations of Water Code, Division 3, Part 1. Subsection (a) also specifies that the Department may record a lien with the appropriate county recorder. Since the statute allows for liens on property of the dam owner, there may be multiple counties and county recorders implicated with respect to recording liens. Subsection (a) also specifies the types of monetary sums that may become the subject of a property lien, which is necessary to inform dam owners of the types of costs that could be included in the lien.

Subsection (b)

Purpose: This subsection establishes a process that must be followed before the Department records a lien on property.

Necessity: Before imposing a lien on real property, due process dictates adequate notice and opportunity to be heard. This subsection lays out this process. This subsection provides for notice to the dam owner and opportunity for a hearing to contest the amount of the lien. Subsection (b)(1) includes a 20-day notice requirement before the hearing and Subsection (b)(2) lists required contents of a notice of the lien hearing. Specifically, Subsection (b)(2) requires that the notice of hearing contain the following information: A.) Identification of the Department as the entity seeking to impose the lien, B.) The Department's authority for imposing the lien, C.) Legal description and assessor's parcel number for real property that is the subject of the lien, D.) The amount of the lien, E.) The name of property owner of record, and F.) The time and date of the hearing where the property owner may appear to contest the lien. The authorizing statutes allow the imposition of property liens for violations of Water Code, Division 3, Part 1, but the statutes do not establish a framework or process for imposing real property liens. Subsection (b) is necessary to establish a procedure that builds in appropriate notice and

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opportunity to be heard in order to protect a dam owner's/real property owner's due process rights and to assure fundamental fairness.

Subsection (c)

Purpose: This subsection provides that the notice and opportunity for a hearing required to impose a lien pursuant to Section 337.48 is satisfied by a hearing conducted under Section 337.14(c) or (d) or the opportunity for a hearing as provided in section 337.12. The purpose of this subsection is to establish that an actual hearing held or a dam owner's opportunity for a hearing under Section 337.14 may satisfy the due process requirements of providing notice and opportunity for a hearing with respect to imposing a lien on real property.

Necessity: In some cases, a hearing held under Section 337.14 may involve DSOD seeking monetary sums, and the dam owner will have had an opportunity to challenge the amount of costs sought by the administrative complaint and the enforcement action in general. If the dam owner is provided an opportunity to request a hearing and fails to do so, or if the dam owner does request a hearing and has the opportunity to challenge the costs, then due process has been provided to the dam owner as there was a meaningful opportunity to challenge costs. Thus, due process considerations would not compel the Department to provide a second opportunity for a hearing to contest costs that would form the basis for the lien. Subsection (c) is necessary to establish that the opportunity for a hearing provided to the dam owner under Section 337.14 may satisfy the due process requirements for imposing a lien, and that a second opportunity for a hearing under Section 337.32 may not be necessary.

Subsection (d)

Purpose: The purpose of Subsection (d) is to establish the duration of any lien placed on real property.

Necessity: This subsection is necessary because while the statutes authorize imposition of liens, the statutes do not address when the liens may be removed or discharged. It is, therefore, necessary to clarify that the lien will be removed or discharged when the lien requirements have been satisfied.

CCR Title 23. Article 7.1 Section 337.50 Applicability; Purpose

Subsection (a)

Purpose: Subsection (a) describes the applicability of Article 7.1 as it pertains to the assessment of administrative civil penalties for violations of the Dam Safety Program and explains the general purpose of the article.

Necessity: This subsection explains that the Article 7.1 applies to the assessment of administrative civil penalties in administrative enforcement actions pursued or orders issued under Article 7, but that the methodology does not apply to penalties that are part of a settlement agreement between the parties. This provision is necessary to clarify that the methodology only applies to administrative enforcement actions pursued or orders issued, and not to any orders or penalties imposed judicially. This provision is also necessary to specify that enforcement actions pursued or orders issued by the Department should follow the calculation method to ensure fairness and consistency, but that this methodology does not hinder in any way the parties' ability to settle or settlement terms. Subsection (a) also clarifies that

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references to the Department also include DSOD and the presiding officer. This is necessary because the methodology will sometimes be used by DSOD when calculating proposed administrative penalties in an administrative complaint, and the methodology will sometimes be used when the Department is issuing an administrative enforcement action. Further, this is necessary to clarify that the methodology must be used by presiding officers issuing decisions, and this includes Department officials or ALJs that serve as presiding officers.

Subsection (b)

Purpose: Subsection (b) explains the general purpose of the article is to promote and facilitate the fair and consistent assessment of administrative civil penalties for violations of Part 1, Division 3 of the Water Code.

Necessity: This subsection states that the purpose of Article 7.1 is to facilitate fair and consistent administrative civil penalties for violations of the Dam Safety Program. This subdivision sets forth specific goals to ensure fair, effective and transparent enforcement as follows:

- Bear a reasonable relationship to the gravity of the violation and harm or potential harm;
- Deter the violator from committing additional violations;
- Deter other dam owners from committing the same or similar violations;
- Eliminate any economic advantage gained from non-compliance with requirements of the Dam Safety Program.

This subsection is necessary to explain the overarching goals of establishing a calculation method for administrative civil penalties, which are intended to facilitate consistency, fairness and transparency.

CCR Title 23. Article 7.1 Section 337.52 Penalty Calculation

Purpose: The purpose of this section is to specify that administrative penalties assessed in administrative actions pursued and orders issued under Article 7 shall be assessed using the procedures established in Article 7.1. This section also specifies that any penalties assessed may not exceed the maximum penalty by statute, which is currently \$1,000 per day, per violation.

Necessity: This section is necessary to make clear that the methodology shall be used when calculating penalties in administrative enforcement actions pursued and orders. These regulations are not intended, nor can they, override statutory limitations, including the current maximum of \$1,000 per day penalty for each violation. This regulation is necessary to clarify that point.

CCR Title 23. Article 7.1 Section 337.54 Daily Initial Penalty for Each Violation

Subsection (a)

Purpose: The purpose of this subsection is to explain that the daily initial penalty will be based on harm or potential harm and the extent to which the violation deviates from the requirements of the Dam Safety Program. This subsection also expressly states that Table 1 in Section 337.54 will be used to determine the daily initial penalty.

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Necessity: The authorizing statutes provide for administrative civil penalties of up to \$1,000 per day, per violation, but the statutes do not establish a framework for determining appropriate penalty amounts. This subsection is necessary to specify the considerations for determining an initial penalty – the level of harm or potential harm and the extent of deviation from Dam Safety Program requirements.

Subsection (b)(1)

Purpose: The purpose of subsection (b) is to specify how harm or potential harm will be evaluated, in the context of violations of Dam Safety Program requirements.

Necessity: Some violations may result in actual harm and some pose a threat of harm. This subsection is necessary to specify that the Department may consider potential harm or actual harm.

Subsection (b)(2)

Purpose: The purpose of this subsection is to provide the criteria or factors that the Department will consider when assessing the degree of harm posed by the violation. These include the dam’s downstream hazard potential classification; the existence of actual harm, potential harm or both; the likelihood that the violations could lead to a failure of the dam or its appurtenant structures; and whether the dam has a State approved EAP in place.

Necessity: The Dam Safety Program requirements are varied, and violations can result in significantly different harms and risks to public safety. Public safety impacts include both threats and harms to human life and property. When evaluating the risk to public safety, the logical starting place is to consider the downstream hazard potential of the dam. Thus, Subsection (b)(2)(A) is necessary to specify that downstream hazard classification is a criterion for assessing harm. This hazard classification reflects the extent of adverse impacts to human life and property should the dam fail. The hazard classifications are as follows:

- Low Hazard Potential. No probable loss of human life and low economic and environmental losses. Losses are expected to be principally limited to the owner’s property.
- Significant Hazard Potential. No probable loss of human life but can cause economic loss, environmental damage, impacts to critical facilities, or other significant impacts.
- High Hazard Potential. Expected to cause loss of at least one human life.
- Extremely High Hazard Potential. Expected to cause loss of at least one human life and one of the following:
 - Result in an inundation area with a population of 1,000 persons or more; or
 - Result in the inundation of facilities or infrastructure, the inundation of which poses a significant threat to public safety as determined by the department on a case-by-case basis.

There are several Dam Safety Program requirements that are dependent or based on the dam’s downstream hazard classification because of the potential threat to public safety if there were a dam failure. Examples include the need for Emergency Action Plans (low-hazard dams are exempt) or the submission deadlines. Emergency Action Plans for Extremely High Hazard dams, High Hazard dams, and Significant Hazard dams were January 1, 2018, January 1, 2019, and January 1, 2021, respectively.

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Further, dam inspection frequencies are tied to downstream hazard classifications, with higher hazard dams being subject to more frequent inspections.

Subsection (b)(2)(B) authorizes consideration of actual harm, potential harm, or both. This subsection is necessary because some violations of the Dam Safety Program requirements may result in actual harm, and it may be appropriate to consider that actual harm when assessing penalties.

Subsection (b)(2)(C) allows for the consideration of the estimated likelihood that the violation could lead to the failure of the dam or structures that are appurtenant to the dam (e.g., spillways, saddle dams) or that could lead to the mis-operation of the dam. The Dam Safety Program contains a variety of requirements, and failure to comply with many of these requirements can be serious enough to lead to dam failure or mis-operation, which could threaten public safety. Some requirements, such as the development of an EAP, while important for planning and mitigating risk, would not lead to the failure of the dam structure. This subsection is necessary to provide for the consideration of violations that could lead to a dam failure as preventing failures is necessary for protection of public safety.

Subsection (b)(2)(D) allows the Department to consider whether the dam has a CalOES approved EAP in place. An EAP is a critical emergency-planning tool, and helps to avoid or reduce harm to human life and property in the event of a failure of a dam or critical appurtenant structure, like a spillway or saddle dam. The existence of an EAP is expected to mitigate potential harm, and it is necessary to establish that the Department can consider this mitigation tool when assessing harm that could flow from a violation.

Subsection (c)(1)

Purpose: The purpose of this subsection is to establish that the extent of the violation of the Dam Safety Program requirement will be considered when assessing the daily initial penalty.

Necessity: The Dam Safety Program contains numerous requirements, all designed to protect public safety, and many of these provide for varying degrees of compliance. There should be consideration given for situations where the dam owner has completely disregarded or deviated from the requirement versus situations where a dam owner has deviated only in part from the requirement.

Subsection (c)(1) is necessary to establish that the Department may consider a dam owner's level of deviation from the subject requirement.

Subsection (c)(2)

Purpose: The purpose of Subsection (c)(2) is to describe the three different categories that convey the extent of deviation from the from Dam Safety Program requirements, and are as follows: Major, Moderate, and Minimal.

Necessity: This subsection is necessary to specify and define the extent-of-deviation classifications, which is a critical component of calculating the daily initial penalty and to provide consistent definitions of these categories.

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Subsection (c)(3)

Purpose: The purpose of this subsection is to acknowledge that some Dam Safety Program requirements have several components, and that the extent of deviation from the requirement shall be based on the most significant requirement, as determined by the Department.

Necessity: This subsection is necessary to clarify how the Department will evaluate the extent-of-deviation component when a Dam Safety Program requirement contains more than one sub requirements.

Subsection (d)

Purpose: The purpose of Subsection (d) is to provide that the daily initial penalty is derived by multiplying the maximum penalty per day (\$1,000) by the liability factor in Table 1. The liability factor is determined by the harm and extent-of-deviation factors in Table 1.

Necessity: Calculating the daily initial penalty is the first step in arriving at an appropriate administrative civil liability assessment. The objective is to select a liability factor that aligns with the severity and threat posed by the violation. The factors for the degree of harm are established in Subsection (b)(2). When considering the degree of harm, the downstream hazard classification is first considered and then adjustments within the established range can be made due to the existence of actual harm (if any), the likelihood that the violation could lead to a dam failure, and existence of an EAP. For example, if the violation involves a high hazard dam, and the extent of deviation is moderate, based on Table 1, the range of liability factor would be 0.3 to 0.6. If the violation was unlikely to lead to a dam failure, there was no actual harm, and the dam had an approved EAP in place, the liability would be expected to be closer to the 0.3 factor than the 0.6 factor. The extent-of-deviation factors in Table 1 correspond to the categories and definitions in Subsection (c). The matrix established in Table 1 is necessary to identify the liability factor, and Subsection (d) is necessary to specify that Table 1 will be used to arrive at the liability factor and the daily initial assessment

CCR Title 23. Article 7.1 Section 337.56 Daily Base Penalty

Subsection (a)

Purpose: The purpose of this subsection is to provide that the daily initial penalty may be adjusted due to the violator's intent in committing the violation and that the adjustment factors contained in Table 2 will be used when making any adjustments.

Necessity: It is recognized that there are varying degrees of culpability when it comes to dam safety violations. These can range from violations that are beyond the control of a dam owner, to those violations that result from an intentional failure to comply with requirements. It is appropriate to adjust the daily initial penalty amount to reflect the violator's intent with respect to committing the violation. This subsection is necessary to establish that the adjustment factors in Table 2 apply when adjusting for the violator's intent and to specify the four different circumstances.

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Subsection (b)

Purpose: This subsection provides that the daily base penalty may be higher or lower than the daily initial penalty derived under Section 337.54. In other words, adjustments may be upward or downward.

Necessity: The administrative civil penalty calculation has multiple steps, and it is necessary to clarify that the daily initial penalty may be adjusted upward or downward due to a violator's intent.

CCR Title 23. Article 7.1 Section 337.58 Multiple Violations

Subsection (a)

Purpose: The purpose of Subsection (a) is to clarify that multiple instances of the same violation count as separate violations, and to provide that the Department, at its discretion, may assess a single daily base penalty for multiple violations.

Necessity: The Dam Safety Program is comprehensive, and violations will be varied. In some cases, it may be appropriate to assess a single daily base penalty, even though there are multiple violations which could each be subject to a daily base penalty. A key goal of these regulations is establishing fair and reasonable penalties that promote compliance with Dam Safety Program requirements and having discretion to assess only a single daily base penalty will facilitate the ability to assess reasonable penalties. This subsection is necessary to provide the Department with the discretion to assess a single daily base penalty in appropriate circumstances, as established in Subsection (b).

Subsection (b)

Purpose: Subsections (b)(1)-(3) identify the circumstances that warrant assessing a single daily base penalty for multiple violations.

Necessity:

- Subsection (b)(1) expresses that a single daily base penalty may be appropriate where the violation occurs on separate occasions unless the dam owner has been notified of the violation and has had sufficient time to correct the violation. There may be separate instances of a violation of dam and in some cases, the dam owner may have been unaware of initial or previous instances of the violation. While the initial or previous violations could each be subject to a penalty, assessing only a single daily base penalty may result in the imposition of a reasonable monetary penalty.
- Subsection (b)(2) describes a multi-violation scenario where the violations are technically separate, but dependent on each other.
- Subsection (b)(3) describes the scenario where a single act violates similar requirements in different approvals or authorizations that are designed to address the same dam safety issue. DSOD may issue several authorizations or approvals that address the same dam safety issue. In these situations, it may be appropriate to assess a single daily base penalty rather than multiple for violation the Certificate of Approval and the later-issued approval, and this subsection is necessary to give the Department the discretion to do that.

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CCR Title 23. Article 7.1 Section 337.60 Multi-day Violations

Subsection (a)

Purpose: This subsection explains that each day a violation continues is a separate violation, and that any reductions to the daily base penalty for continuing violations must be made in accordance with Section 337.60.

Necessity: This subsection is necessary to specify that each day of violation of a continuing violation is a separate violation, subject to penalties. This subsection is also necessary to specify that any adjustments to penalties for multi-day violations must be made in accordance with Section 337.60.

Subsection (a)(1)

Purpose: This subsection provides that the starting point for making any multi-day adjustments is the daily base penalty, which is calculated pursuant to Sections 337.56 and 33.58. This subsection also describes the criteria that must be satisfied in order for the Department to reduce the daily base penalty for continuing violations. Specifically, this subsection authorizes the Department to make a reduction in the daily base penalty for multi-day violations where the Department finds any of the following:

- The violation is not causing daily detrimental impacts to public safety;
- The violation results in no discrete economic benefit from the illegal conduct that can be measured on a daily basis; or
- The violation occurred without the knowledge or control of the dam owner, who therefore did not take action to eliminate or mitigation the violation.

Necessity: The overall objective of pursuing enforcement actions, including assessing administrative civil penalties, is to obtain compliance with Dam Safety Program requirements. It is not the intention of the Department to impose excessive penalties, but rather, a reasonable and fair penalty that will result in compliance with the underlying substantive dam safety requirement, and promote compliance in the future from the subject dam owner and other dam owners. The Department has identified three general scenarios (listed above) that justifies making reductions for multi-day violations. Some violations may cause a daily detrimental impact to public safety; for example, exceeding a reservoir storage restriction ordered by the Department as a risk reduction measure due to dam safety deficiencies. There may be other violations where the violation does not cause a daily detrimental impact to public safety. Subsection (a)(1)(A) is necessary to allow the Department to make reductions where the continuing violation does not cause daily impacts that increase the risk to public safety. Subsection (a)(1)(B) allows for a reduction to the daily base penalty for multi-day violations where the violation results in no discrete economic benefit that can be measured on a daily basis. Subsection (a)(1)(B) is necessary because the Department requires timely compliance, and it is necessary to eliminate any economic advantage associated with non-compliance. In other words, penalties for non-compliance must be significant enough to encourage compliance in the first instance. With some violations, the Department may reduce the daily penalty where there is no daily economic benefit realized by the dam owner for non-compliance and it is not necessary to create a disincentive for compliance. Subsection (a)(1)(B) is necessary to permit the Department to reduce the daily base penalty in these situations, because even a reduced penalty is expected to create an appropriate penalty to promote compliance by the subject dam owners and the regulated community. Subsection (a)(1)(C)

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is necessary because there may be some violations that occur without the knowledge of the dam owner or are outside of the control of the dam owner to correct expeditiously. The Department has determined that it may be appropriate to reduce the daily base penalty for multi-day violations under these circumstances, and so Subsection (a)(1)(C) is necessary to permit this reduction.

Subsection (a)(2)

Purpose: The purpose of this subsection is to provide criteria for reducing the daily base penalty and a methodology for reducing the daily base penalty for violations that occur for multiple days when the required criteria are met. Specifically, this subsection establishes that the Department need only make one of the findings in Subsection (a)(1) to reduce the daily base penalty and that if any of the findings are made, the Department may make this reduction for each violation during the Period of Violation by using a multi-day reduction factor or “MDR.” This subsection also provides a clear method for calculating the Reduced Daily Base Penalty.

Necessity: This subsection provides that the Reduced Daily Base Penalty is equal to the Daily Base Penalty (which is calculated under Section 337.56 or Section 337.58) multiplied by the MDR (multi-day reduction) factor. The starting point is the daily base penalty calculated under Section 337.56 or 337.58. If one of the findings under subsection (a)(1) is made with respect to a violation that occurs over multiple days, then it is appropriate and consistent with the objectives stated in Section 337.50(b) to reduce the daily base penalty for each day of violation and not apply the full daily base penalty. In these cases, the Department may apply a Reduced Daily Base Penalty, which is arrived at by multiplying the daily base penalty by the multi-day reduction factor or MDR. The MDR factor is calculated by dividing the Alternative Penalty Assessment (number of days of violation that will be counted for penalty-calculation purposes) by Period of Violation (number of days that the violation actually occurs). The Alternative Penalty Assessment is calculated pursuant to Table 3 by adding up the days of violation that will be counted for purposes of calculating penalties. The Alternative Penalty Assessment provides a methodology for collapsing total days of violation, and when it is divided by the total days of violation, the result is the MDR factor that will be used to reduce the daily base penalty that would otherwise apply. This subsection is necessary to provide a clear and consistent methodology for reducing the daily base penalties for violations that occur over multiple days when appropriate to do so, i.e., when at least one of the findings in subsection (a)(1) is made. Otherwise, penalties for multi-day violations could be unnecessarily high to achieve the goals stated in Section 337.50(b).

The following is an example to show how the Reduced Daily Base Penalty is calculated under this subsection.

Daily base penalty: \$1,000
Period of Violation: 250 days
No daily detrimental impacts to public safety

Because the violation is not causing daily detrimental impacts to public safety, a reduction to the daily base penalty for a multi-day violation may be allowed per 337.60(a)(1)(A).

The multi-day reduction factor (MDR) is determined per 337.60(a)(2).

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MDR factor = (Alternative Penalty Assessment) ÷ (Period of Violation)

Alternate Penalty Assessment for a Period of Violation of 250 days

Period of Violation, calendar days	Determination of Counted Days	Counted Days
First 30 days	Count every day, up to a maximum of 30 days	= 30
Next 30 days	Count every additional 5 days, up to a maximum of 6 days	$30 \div 5 = 6$
Every additional 30 days thereafter	Count every additional 30 days, no maximum	$190 \div 30 = 6.3^*$

Alternate Penalty Assessment = $30 + 6 + 6 = 42$

MDR factor = $42 \div 250 = 0.168$

The reduced Daily Base Penalty = $(\$1,000 \text{ per day}) \times (0.168) = \168 per day^{**}

* In determining the Alternate Penalty Assessment, fractions of a day are always rounded down to the nearest whole number.

** Rounded to the nearest dollar.

CCR Title 23. Article 7.1 Section 337.62 Total Base Penalty

Purpose: The purpose of this section is to provide that the total base penalty is the daily base penalty as determined by Article 7.1 (which includes Reduced Daily Base Penalties) multiplied by the Period of Violation. The Period of Violation is defined in Section 337.2 and means the number of days of violation as determined by the Department.

Necessity: The method for calculating administrative civil penalties is multi-stepped, and it is necessary to clearly define and specify the meaning of Total Base Penalty.

CCR Title 23. Article 7.1 Section 337.64 Total Base Penalty Adjustments

This section describes five different factors that justify adjusting the total base penalty in the last step of penalty calculation, leading to the final penalty. Each adjustment factor is described below.

Subsection (a)

Purpose: This subsection allows for adjustments based on the dam owner's cooperation in addressing the violation, including voluntarily disclosing the violation and dam owner efforts to correct the violation.

Necessity: This subsection requires the use of Table 4 to determine appropriate adjustments for cooperation. The Total Base Penalty may be reduced for positive cooperation efforts by the dam owner, and the penalty may be increased for a dam owner's failure to cooperate in returning to compliance. The overall goal of pursuing administrative enforcement is to obtain timely and effective compliance with Dam Safety Program requirements, and one way to accomplish this is to encourage cooperation by

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the dam owner by providing financial incentives. This subsection is necessary to allow the Department to make upward or downward adjustments to the Total Base Penalty to encourage cooperation on the part of dam owners, and to provide clear descriptions and adjustment factors (Table 4) for consistency and transparency.

Subsection (b)

Purpose: The purpose of this subsection is to provide for adjustments either upward or downward to ensure that the penalty is sufficient to promote future compliance and prevent future violations by the subject dam owner or other regulated dams, without being unduly burdensome. A typical reason for this type of adjustment is to ensure that the penalty is set at a level that eliminates a dam owner's economic advantage by not complying with Dam Safety Program requirements.

Necessity: DSOD regulates approximately 1,240 dams throughout the state, and dam owners vary from large utilities to private, individual dam owners. For some dams and dam owners, the Total Base Penalty, before adjustments made under this section, may not be significant enough to deter future violations by the subject dam owner or similarly-situation dam owners. On the other hand, there may be situations where the Total Base Penalty calculated under Section 337.62 are more than enough to encourage regulatory compliance. This subsection is necessary to allow the Department to make adjustments to assess appropriate penalties and promote future compliance by dam owners.

Subsection (c)

Purpose: The purpose of Subsection (c) is to allow for upward adjustments (a factor of up to 2.0) to the Total Base Penalty for dam owners/violators that have a history of non-compliance over the last five years, and to describe criteria that the Department will consider when making these adjustments. The Department will consider the following:

- Previous violations at the site in question receive more weight than violations at other dams/sites owned by the same dam owner.
- Recent violations receive more weight than older violations.
- The same or substantially similar previous violations receive more weight than previous unrelated violations.

Necessity: This section allows an upward adjustment of up to twice the Total Base Penalty (up to a 2.0 factor) if the dam owner has a history of noncompliance over the last five years. The Department determined that a five-year period for the history of compliance is sufficient because older violations are offset by more recent compliance. This subsection allows for a maximum factor of 2.0, so it is necessary to establish the factors described in 1-3 above to provide a clear and consistent framework for making compliance-history adjustments. It is important to highlight that this regulation considers dam owner compliance, including compliance at other dams owned by the dam owner that is the subject of the subject enforcement action. The Department has determined that is appropriate to give more weight to violations at the dam that is the subject of the enforcement action, and Subsection (c)(1) is necessary to specify this. The Department also determined that recent noncompliance should be given more weight as older incidents of noncompliance may be counterbalanced by more-recent efforts by the dam owner to comply with requirements, and Subsection (c)(2) is necessary to account for this approach. The Department determined that the same or similar violations should receive more weight as the dam

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owner is expected to understand these compliance issues and to have taken efforts to prevent the same violations going forward. Subsection (c)(3) is necessary to allow the Department to make adjustments consistent with this position.

Subsection (d)

Purpose: This subsection allows for a reduction to the total base penalty if it is demonstrated that the penalty will result in an adverse financial impact to a disadvantaged community, which is defined as follows: a community with an annual median household income that is less than 80 percent of the statewide annual median household income.

Necessity. The Department is mindful of the fact that administrative civil penalties imposed through an enforcement action may be passed on to ratepayers and that increased rates may create financial hardships for some communities. The purpose of this subsection is to allow for a reduction of the administrative penalty to reduce adverse financial impacts to communities that already face financial hardships, if the Department is provided with sufficient supporting documentation. This subsection is necessary to allow the Department to make downward adjustments where members of a disadvantaged community will shoulder the costs of the penalty. This subsection is also necessary to specifically define a disadvantaged community so that the application of this provision is both consistent and transparent.

Subsection (e)

Purpose: The purpose of this subsection is to provide that a demonstrated inability to pay the final penalty by the dam owner will allow the Department to spread out the penalty over time or to reduce the total penalty. This subsection also carves out exceptions to this if there have been upward adjustments to the total penalty on account of the dam owner's failure to cooperate or compliance history, in accordance with subsections (a) and (c), respectively.

Necessity: As stated throughout this document, the goal of administrative enforcement is to promote timely compliance with Dam Safety Program requirements, for the protection of public safety. It is not the Department's goal to impose overly burdensome penalties or create extreme financial hardship. While there must be ramifications for violations and appropriate incentives to comply in the future, the Department has determined that it is appropriate to consider extreme financial hardship that may result by imposing the total base penalty. In some cases, extreme financial hardship may be avoided by spreading out the penalty over a period of time, but in other situations, a reduction in the penalty may be appropriate. If the dam owner can demonstrate that the final penalty will result in extreme financial hardship, then it is appropriate to vest the Department with the discretion to reduce or spread out the penalty. This subsection is necessary to give the Department that discretion, and to establish criteria for exercising that discretion. This subsection is also necessary to clearly establish that the dam owner must provide financial information and supporting documentation to support an adjustment under this subsection.

CCR Title 23. Article 7.1 Section 337.66 Final Penalty

Purpose: This section states that the final penalty consists of the total base penalty, with any adjustments made pursuant to Section 337.64, and that the final penalty cannot exceed the statutory daily maximum over the number of days of violation.

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Necessity: This section is necessary to make clear how the final penalty is calculated.

CCR Title 23. Article 7.1 Section 337.68 Deviations from Standard Methodology

Purpose: This section restates the need to ensure that penalties are assessed in a consistent manner, but also recognizes that every violation and enforcement case presents unique facts and circumstances. This section allows the Department to deviate from the methodology outlined in Article 7.1 if a strict application would be inconsistent with the overall enforcement objectives expressed in Section 337.50(b), which are as follows:

- Bear a reasonable relationship to the gravity of the violation and the harm or potential harm to public safety;
- Deter the specific violator from committing additional violations;
- Deter other dam owners within the regulated community from committing the same or similar violations; or
- Eliminate any economic advantage obtained from non-compliance.

Necessity: This section allows the Department to adjust the Final Penalty upward or downward but only if the Department makes specific findings about the need to do so to serve the purpose of the goals in Section 337.50(b). The Department has carefully developed a multi-stepped process for calculating penalties, in an effort to arrive at fair, consistent and equitable administrative civil penalties. However, the Department acknowledges that there may be circumstances unique to a case where a strict application of the methodology will lead to penalty amounts that do not serve the overall purpose of administrative enforcement or that result in inequitable results. The expectation is that this section will be used rarely, but if it is used, the Department is required to explain its reasoning with specific findings. This section is necessary to establish a process whereby the Department can depart from the standardized methodology where justified and appropriate.

5. Authority and Reference

Authority: Water Code, section 6078

Reference: Water Code, sections 6002, 6005, 6053, 6075, 6077, 6079, 6100, 6101, 6120, 6160, 6161, 6308, 6357.1, 6357.4, 6428, 6429, 6431, 6432.

6. Economic Impact Assessment

The Department has determined that the proposed regulations are not major regulations as defined in the Administrative Procedures Act. Enforcement actions authorized by statute only apply to dam owners that are not in compliance with the Dam Safety Program; there are no estimated initial or ongoing costs associated with these regulations. The proposed regulations establish procedures to take administrative enforcement actions authorized by statute, which are intended to encourage and facilitate timely compliance with Dam Safety Program requirements. Greater compliance with these requirements will aid in avoiding dam failures and increase public safety.

The proposed regulations establish procedures to take administrative enforcement actions, which are intended to encourage and facilitate timely compliance with Dam Safety Program requirements. Greater compliance with dam safety requirements will aid in avoiding dam failures and are expected to, in turn, avoid or reduce adverse impacts to the environment that may be occasioned by dam failures.

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The Department does not anticipate increased cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

The Department assessed the economic impact of addressing violations pursuant to Water Code Division 3, Part 1 through administrative proceedings rather than civil litigation. The Department does not anticipate incurring any additional costs as part of these regulations. It is envisioned that efforts/costs currently incurred by the Department with regards to enforcement actions will be refocused within the Department following the approval of these regulations (small focused group versus siloed groups/individuals). The Department estimates that there could be some potential savings in civil litigation costs formerly incurred for the Attorney General's Office representation in civil cases. The Department anticipates costs to the California Governor's Office of Emergency Services as that state agency is expected to assist the Department with cases involving noncompliance with emergency planning requirements (i.e., EAPs). Other state agencies may incur costs if they own non-compliant dams that are subject to administrative enforcement by the Department. There are no related costs or savings in Federal funding to the state associated with the proposed regulatory action.

7. Documents Relied Upon

The following were relied upon in the development of these regulations:

- FEMA Model Dam Safety Program

8. Benefits

The proposed regulations will aid in providing a means to address dam owners that are not compliant with the Dam Safety Program that provides regulatory oversight of about 1,240 jurisdictional dams with respect to dam safety for the protection of public safety as well as the environment. Dams provide multiple benefits to the State in areas associated with power production, water supply, agricultural use, industrial use, flood control, recreation, wildfire suppression, and the environment. Given the critical role that dams contribute to the welfare of the State and considering that millions of people statewide live near dams or use them for recreation, the consequences of a dam failure may be extreme with respect to high life loss, billions in economic loss, and adverse environmental impacts.

The proposed regulations also provide a number of specific benefits, including transparency and promotion of fairness. The administrative process is set forth in great detail, ensuring that dam owners understand their rights and have an opportunity to present evidence in their defense. For instance, the proposed regulations inform dam owners how to contest an administrative enforcement action, request a hearing, and explain the hearing procedures.

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.

The intent of the proposed adoption of these regulations is to establish regulatory procedures to pursue and impose administrative enforcement actions against dam owners that fail to comply with Dam Safety Program requirements, and to establish a consistent methodology for calculating monetary civil

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penalties. In the course of reviewing the proposed regulations, the Department considered three different potential alternatives, as described below.

Alternative 1

The regulations establish a multi-stepped administrative enforcement process, including the right of the dam owner to request a hearing to challenge an enforcement action proposed by DSOD. The Department considered using the State's Office of Administrative Hearings exclusively to hold these hearings.

Alternative 2

The regulations allow for, among other enforcement actions, the imposition of civil penalties, and the authorizing statutes allows for civil penalties of up to \$1,000 per day, per violation. The Department identified a variety of factors that should be considered when determining the level of per day penalty, up to the \$1,000, and considered listing the factors, rather than both listing the factors and establishing a methodology. The factors include the following, with respect to the violation: the actual or potential harm to public safety, including human life and property, extent of deviation from the dam safety requirement, the amount of time over which the violation occurs, any prior history of violations, any corrective action taken by the dam owner, the dam owner's culpability and ability to pay the penalty, any impacts to disadvantaged communities, and the prophylactic effect that the imposition of the penalty would have on both the dam owner and the regulated community as a whole.

Alternative 3

No regulation.

Consideration of Alternatives

The authorizing statutes allow the Department to take enforcement actions to obtain compliance with Dam Safety Program requirements, and due process considerations dictate that dam owners have notice and an opportunity to contest noncompliance allegations. Without the proposed regulations, hearing procedures and the Department's method of calculating administrative civil penalties would be less clear to the regulated community and other interested persons and less consistent. The proposed regulatory action will avoid the above-referenced shortcomings.

The primary purpose of the enforcement provisions in Water Code, Division 3, Part 1, is to provide the authority to the Department to take reasonable actions in response to noncompliance with dam safety requirements in an effort to obtain compliance by dam owners. The primary purpose of these regulations is to: 1.) Provide dam owners who are subject to an administrative enforcement action a regulatory process that ensures fairness through the establishment of clear, detailed, and consistent procedures, including hearing procedures; and 2.) Provide a clear method for calculating administrative civil penalties to ensure fairness, consistency, and transparency.

The first alternative was rejected because the Department determined that using the hearing process established by the state's Office of Administrative Hearings may not be necessary in all cases and that the process may appear too complicated to some dam owners. The types of Dam Safety Program requirements vary and can range from failure to submit emergency planning documents to failure to

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comply with highly technical dam safety requirements. In many cases, the underlying disputed facts are not complicated, and a simplified hearing process is appropriate, and may be viewed as more accessible by dam owners. The proposed regulations provide for the option to use the OAH process, and the Department expects to use that process where an enforcement case is complicated or presents a potential conflict of interest.

The second alternative was rejected because the Department determined that simply listing the factors that would guide the Department in setting the administrative civil penalty amount may not lead to the desired level of consistency. Instead, the Department determined that listing factors, and establishing a methodology for using the factors, demonstrates the weight that is given to different factors, and will lead to the level of transparency and consistency that the Department seeks.

The third alternative was rejected as there is a real need, based on new statutory authority, to establish regulatory procedures to pursue and impose administrative enforcement actions against dam owners that fail to comply with Dam Safety Program requirements, and to establish a consistent methodology for calculating monetary civil penalties. The authorizing statutes allow the Department to take enforcement actions to obtain compliance with Dam Safety Program requirements, and due process considerations dictate that dam owners have notice and an opportunity to contest noncompliance allegations. Without the proposed regulations, hearing procedures and the Department's method of calculating administrative civil penalties would be less clear to the regulated community and other interested persons and less consistent. The proposed regulatory action will avoid the above-referenced shortcomings.

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. The proposed regulations are designed to implement enforcement provisions contained in Water Code, Division 3, Part 1 by establishing regulatory procedures to: impose punitive actions, including administrative civil penalties; conduct hearings in an orderly and just manner; and to establish a clear method for calculating monetary penalties. 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.

The Department does not anticipate the creation or elimination of jobs within the state as a result of the proposed regulatory action. The proposed regulations are designed to implement enforcement provisions contained in Water Code, Division 3, Part 1 by establishing regulatory procedures to: impose punitive actions, including administrative civil penalties; conduct hearings in an orderly and just manner;

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and to establish a clear method for calculating monetary penalties. These regulations are procedural in nature and therefore will not create requirements that would either create or eliminate jobs in California.

The Department does not anticipate the creation of new businesses or elimination of existing businesses within the state as a result of the proposed regulatory action. The proposed regulations are designed to implement enforcement provisions contained in Water Code, Division 3, Part 1 by establishing regulatory procedures to: impose punitive actions, including administrative civil penalties; conduct hearings in an orderly and just manner; and to establish a clear method for calculating monetary penalties. These regulations are procedural in nature and therefore will not create or eliminate businesses in California. 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. Therefore, the regulations do not create additional impacts on the business community.

The Department does not anticipate any impacts on the expansion of businesses currently doing business within the state as a result of the proposed regulatory action. The proposed regulations implement Water Code Division 3, Part 1 by establishing procedures to impose civil penalties and conduct hearings in an orderly and just manner and by establishing a method to calculate monetary penalties. The regulations are not relevant to the expansion of businesses currently doing business within the state because the regulations are procedural in nature. Furthermore, the proposed regulations do not make compliance with existing law more difficult or costly, and do not expand the application of the Water Code Division 3, Part 1 or increase the penalties imposed thereby. Therefore, the proposed regulations do not create new requirements that would impact the expansion of businesses currently doing business in California.

11. Consistency with Federal Law

The proposed regulations set forth procedures for pursuing administrative enforcement, including imposing civil penalties, conducting administrative hearings, and calculating the amount of administrative civil penalties. The proposed regulations do not duplicate or conflict with federal regulations