

**DEPARTMENT OF WATER RESOURCES**

1416 NINTH STREET, P.O. BOX 942836  
SACRAMENTO, CA 94236-0001  
(916) 653-5791



STATE OF CALIFORNIA  
DEPARTMENT OF WATER RESOURCES  
Notice of Proposed Rulemaking  
Add Section 306 to Article 1 and Add Articles 7 and 7.1  
To Chapter 1, Division 2, Title 23, California Code of Regulation  
Publication Date: May 21, 2021

The Department of Water Resources (Department), Division of Safety of Dams (DSOD) implements the regulatory program established in Part of 1 of Division 3 of the Water Code. To implement this program, the Department has adopted regulations that govern several aspects of the program, including construction and enlargement of dams, inundation map requirements, and fees. These statutes and the Department's regulations comprise what is commonly referred to as the Dam Safety Program. To address violations of the Dam Safety Program requirements, the Department proposes to adopt regulations that will govern its administrative enforcement procedures and its assessment of administrative civil penalties. The Department also proposes to adopt a regulation that will, interpret, clarify, and reinforce the Department's information-request process to gather information from dam owners and suspected dam owners.

The Department will conduct a public hearing at the time and in the manner noted below to receive comments on the proposed regulations.

## Public Hearing

Interested members of the public may present comments on the proposed regulations orally or in writing at the hearing. The hearing will be held in accordance with the requirements in Government Code section 11346.8, and the hearing details are as follows:

Date: Monday, July 12, 2021  
Time: 10:00 a.m.  
Location: Remote Hearing

Remote: Instructions on how to attend remotely will be made available at least 10 days before the hearing at the following website:  
[www.water.ca.gov/damsafety](http://www.water.ca.gov/damsafety)  
Any questions related to attending the hearing remotely may be directed to the Department contact person listed below.

The hearing will commence at 10:00 a.m. and conclude after the last speaker has been heard. Attendees, especially those intending to provide oral comments at the hearing, are encouraged to access the remote public hearing no later than 10:00 a.m. in the event few or no commenters testify and/or the testimony that is given is brief. Attendees are encouraged to familiarize themselves with the remote instructions, which will be posted on the website identified above, and ensure that they have the appropriate technology to attend before the hearing begins.

## Written Comment Period

Interested members of the public, or authorized representatives, may submit written comments relevant to the proposed regulatory action to the Department. All written comments must be received by the Department no later than **5:00 p.m. on Thursday, July 15, 2021**. Comments received after the end of the written comment period are considered untimely. The Department may, but is not required to, respond to untimely comments. Interested members of the public may submit written comments by postal mail or email, and to be considered by the Department, timely written comments must be addressed to the following:

Email:

Shawn Jones, Assistant Chief  
Division of Safety of Dams  
[Shawn.Jones@water.ca.gov](mailto:Shawn.Jones@water.ca.gov)  
(916) 565-7802

Postal Mail:

Shawn Jones, Assistant Chief  
Division of Safety of Dams  
P.O. Box 942836  
Sacramento, CA 94236-0001  
(916) 565-7802

Please note that under the California Public Records Act (Government Code, § 6250 et seq.), written and oral comments, attachments, and associated contact information (e.g. address, phone, email) become part of the public record and can be released to the public upon request.

## Authority and Reference

**Authority:** Water Code section 6078 authorizes the Department to adopt the proposed regulations.

**Reference:** The proposed regulatory action will implement, interpret, and/or make specific Water Code sections 6002, 6005, 6053, 6075, 6077, 6079, 6100, 6101, 6102.5, 6120, 6121, 6160, 6161, 6308, 6357.1, 6357.4, 6428-6432.

## Informative Digest of Proposed Action and Policy Statement Overview

The Department's Division of Safety of Dams provides regulatory oversight of approximately 1,240 dams, owned by approximately 630 different dam owners, to prevent dam failure, safeguard life, and protect property. Dams provide multiple benefits to the State in areas associated with power production, water supply, agricultural use, industrial use, flood control, recreation, 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 or recreate at reservoirs, the consequences of a dam failure may be significant with respect to life loss, economic loss, and adverse environmental impacts. While the overall majority of dam owners are compliant with state dam safety requirements and effectively work with DSOD to address identified deficiencies, there are non-compliant dam owners where formal enforcement actions are necessary to obtain compliance with dam safety requirements. The proposed regulations establish clear procedures for pursuing administrative enforcement actions against non-compliant dam owners and result in efficient resolution of dam safety violations.

## Summary of Existing Laws and Regulations

The Department's DSOD implements Part 1 of Division 3 of the Water Code. To implement

these statutes, the Department has adopted regulations that govern several aspects of the Dam Safety Program, including construction and enlargement of dams, inundation map requirements, and fees. These regulations are contained in Title 23 of the California Code of Regulations, Division 2, Chapter 1.

#### *Senate Bill 92 Changes to the Water Code*

In 2017, Senate Bill 92 (SB 92) made changes to the Water Code that enhanced the Department's enforcement authority. It amended Water Code section 6428, to allow the Department to assess interest for late paid further fees (or any portion thereof); this section already allowed for the assessment of interest for unpaid annual fees. Senate Bill 92 added Water Code section 6429, which authorizes the Department to impose property liens and reservoir restrictions, and Water Code section 6430, which authorizes the Department to seek fines for unlawfully constructed or operated dams. Senate Bill 92 added Water Code section 6431, which authorizes the Department to prepare an Emergency Action Plan ("EAP") and inundation map(s) if the dam owner fails to do so and recover the costs of preparing these from the dam owner. Senate Bill 92 also added Water Code section 6432, which authorizes the Department to 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.

#### *Other Water Code Sections*

Water Code section 6150 authorizes the Department to initiate a civil action to stop or prevent violations of Dam Safety Program requirements. Water Code section 6425 provides that any person who violates any provision of Division 3, Part 1 is guilty of a misdemeanor.

A certificate of approval is issued upon a finding that the dam is safe to impound water. Section 6357.4 of the Water Code provides that before a certificate of approval is revoked, the Department must hold a public hearing; that written notice of the time and place of the hearing shall be mailed, at least 20 days prior to the date set for the hearing, to the holder of the certificate; and that any interested persons may appear at the hearing and present their views and objections to the proposed action.

DSOD, through its implementation of the Dam Safety Program, makes regulatory decisions and takes regulatory action, which requires certain information. In addition to this inherent need to gather information to make decisions and take action, the Water Code requires owners to provide the Department with information. A summary, specific to this proposed rulemaking action, of these sections follows. Water Code section 6101 requires dam owners to provide the Department, if requested, with reports on maintenance, operation, staffing, and engineering and geologic investigations. Water Code section 6102.5 provides the Department with broad inspection authority, including the requirement that owners provide the Department with information necessary to determine the conditions of dams, reservoirs, and critical appurtenant structures regarding their safety. Water Code section 6120 allows the Department to require investigations and studies and to require that data be provided, that is necessary to review and study the design and construction of dams, reservoirs, and appurtenances. Water Code section 6121 provides that the Department may require watershed investigations and studies as may facilitate its decisions.

#### *Administrative Procedures Act*

Government Code sections 11400 to 11475.70 provide procedures for conducting

administrative hearings pursuant to the Administrative Procedure Act. Article 6 (beginning with section 11425.10) provides fundamental requirements for conducting administrative hearings.

## Effect of Proposed Rulemaking

The proposed regulations will establish a clear process to govern the administrative enforcement process for actions against dam owners that are suspected of failing to comply with Dam Safety Program requirements. They will provide an efficient mechanism for the timely resolution of suspected violations of the Dam Safety Program, which will lead to an increased level of compliance with requirements to ensure dam safety. The proposed regulations will help assure dam owners that the process that governs administrative enforcement actions, including hearings, will be conducted in a manner that is fair and transparent.

## Objectives and Benefits of the Proposed Regulations

The overall objective of the proposed regulations is to establish a fair, consistent and transparent administrative enforcement process that will help resolve dam safety violations. This, in turn, will provide public safety benefits by increased compliance with dam safety requirements and standards. This process includes, but is not limited to, establishing rules that govern hearings and, with respect to monetary civil penalties, providing a clear methodology on how the penalties are calculated. 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 transparent manner.

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 Dam Safety Program requirements.

## Differences from Comparable Federal Regulations

The Department has determined that there are no existing, comparable federal regulations.

## Compatibility with Existing State Regulations

The Department has conducted an evaluation and has found that these are the only regulations concerning administrative enforcement for Dam Safety Program violations. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

## Other Matters Prescribed by Statute

The Department's implementation of the Dam Safety Program is prescribed by Water Code, Division 3, Part 1. Other bodies of law that govern the Department include, but are not limited to, the Government and Public Resources Code.

## Disclosures Regarding Proposed Action

*Mandate on local agencies and school districts*

The Department has determined that the proposed regulations will not impose a mandate on local agencies or school districts that is required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of the Government Code.

*Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630*

None

*Cost or savings to state agencies*

The proposed regulations apply to noncompliant dam owners, including state agencies that own dams. There are 48 dams regulated by DSOD that are owned by state agencies. While the assessment of administrative penalties or other punitive measures would present a cost to state agency dam owners, these are not typical costs or costs incurred in reasonable compliance with this regulation. The costs to state agencies under these regulations are dependent on the state agency's compliance with dam safety requirements. Notwithstanding the above, the Department conservatively estimates that costs incurred by noncompliant state agencies to be up to \$262,800 during any given 12-month period.

*Non-discretionary costs imposed on or savings by local agencies.*

The proposed regulations apply to noncompliant dam owners, including local agencies. While the assessment of administrative penalties would present a cost to the local agency, these are not typical costs or costs incurred in reasonable compliance with this regulation. The costs to local agencies under these regulations are dependent on the local agency's compliance with dam safety requirements. Notwithstanding the above, the Department conservatively estimates costs incurred by noncompliant local-agency dam owners to be up to \$3,306,900 during any given 12-month period.

*Estimated cost or savings in federal funding to the state*

The Department has determined that the regulations will not result in any costs or savings in federal funding to the state.

## Housing Costs

The Department has made the initial determination that the proposed regulatory action will not have a significant effect on housing costs.

## Significant Adverse Economic Impacts

The Department has made an initial determination that the proposed regulatory action will not have a significant, statewide, adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The proposed regulations do not make compliance with existing law more difficult or costly and do not expand the application of the civil penalties available under the Water Code or increase the penalties imposed thereby.

## Statement of Results of Economic Impact Assessment

The cost to comply with this regulation will not result in any new or ongoing cost for dam owners that are compliant with the Dam Safety Program requirements. The proposed regulations will establish procedures for imposing administrative civil penalties, punitive reservoir restrictions, and other actions to ensure compliance with California's Dam Safety Program, and non-compliant dam owners will be subject to punitive actions including monetary penalties. The Department does not anticipate any impacts on the creation or elimination of jobs, the creation of new business, the elimination of existing businesses, the expansion of businesses in California, or benefits to worker safety. The Department anticipates benefits to the safety and welfare of California residents from more efficient enforcement of the Dam Safety Program violations and an increased level of compliance with dam safety requirements.

## Cost Impacts on a Representative Person or Business

The agency is not aware of significant cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The proposed regulations apply to noncompliant dam owners, including businesses that own jurisdictional dams. While the assessment of administrative penalties and other punitive measures would present a cost to dam owners that are businesses, these are not typical costs incurred in reasonable compliance with these regulations. Rather, the costs to businesses are dependent on their compliance with dam safety requirements. Notwithstanding the above, the Department conservatively estimates that costs incurred by noncompliant dam owners in the private sector to be about \$3,213,800 during any given 12-month period.

## Business Report Requirements

There are no reporting requirements required by these regulations.

## Effect on Small Business

The Department estimates that approximately 83 jurisdictional dams are owned by small businesses. The Department has determined that the proposed regulations are unlikely to have a significant statewide adverse economic impact affecting small businesses because the proposed regulations do not make compliance with existing law more difficult or costly and do not expand the application of or increase the amount of civil penalties. The only cost impact would arise out of noncompliance with Dam Safety Program requirements. While the assessment of administrative penalties and other punitive measures would present a cost to dam owners that are small businesses, these are not typical costs and are dependent on the dam owner's compliance with dam safety requirements.

## Alternatives Statement

The Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department:

- would be more effective in carrying out the purpose for which the action is proposed,
- would be as effective and less burdensome to affected private persons than the proposed action, or

- would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

## Department Contact Persons and Availability of Documents

### Department Contact Persons

Questions regarding the proposed regulatory action may be directed to:

#### *Contact Person:*

Shawn Jones, Assistant Chief  
Division of Safety of Dams  
P.O. Box 942836  
Sacramento, CA 94236-0001  
[Shawn.Jones@water.ca.gov](mailto:Shawn.Jones@water.ca.gov)  
(916) 565-7802

#### *Backup Contact Person*

Peter Thyberg, Senior Staff Counsel  
[Peter.Thyberg@water.ca.gov](mailto:Peter.Thyberg@water.ca.gov)  
(916) 834-1787

### Availability of Proposed Regulations, Initial Statement of Reasons, and Rulemaking File

The Department has prepared an initial statement of reasons (ISOR) for the proposed regulations. This Notice, the ISOR, the express terms of the proposed regulation, and all information upon which the proposed regulations are based are available on the Department's website at <http://www.water.ca.gov/damsafety>. In addition, documents may be obtained by making a request to the Department contact person listed above.

### Availability of Modified Text of the Regulations

If the Department makes modifications to the text of the regulations that are sufficiently related to the originally-proposed text, the Department will make the modified text available (with changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. The modified text will be posted on the Department's website at <http://www.water.ca.gov/damsafety>.

### Final Statement of Reasons and other Documents related to the Proposed Regulations

All subsequent regulatory documents, including the final statement of reasons, when completed, will be made available at [www.water.ca.gov/damsafety](http://www.water.ca.gov/damsafety) or by requesting materials from the contact person listed in this notice.