

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 753

Introduced by Senator Steinberg
(Coauthors: Assembly Members Dickinson and Pan)

February 22, 2013

An act to amend Section ~~8709.5~~ of 8732 of, to add Sections 8579, 8710.2, 8710.3, and 8710.4 to, and to repeal and add Article 6 (commencing with Section 8700) of Chapter 3 of Part 4 of Division 5 of, the Water Code, relating to flood protection.

LEGISLATIVE COUNSEL'S DIGEST

SB 753, as amended, Steinberg. Central Valley Flood Protection Board: encroachments: Board.

(1) Existing law provides for the Central Valley Flood Protection Board with the authority to construct and maintain various flood control works. Existing law authorizes the board to hold a hearing or partial hearing before a committee of one or more members of the board, or before the general manager or chief engineer of the board, at any place within the state.

This bill would eliminate the authorization for the board to hold a hearing before the general manager and would authorize the board to hold a hearing or partial hearing before a qualified neutral hearing officer designated by the board president or the executive officer.

(2) Existing law requires specified plans that contemplate the construction, enlargement, revetment, or alteration of any levee, embankment, canal, or other excavation in the bed of or along or near the banks of the Sacramento or San Joaquin Rivers or any of their tributaries or specified lands to be approved by the board before construction is commenced.

This bill would generally prohibit a person or governmental agency from placing an encroachment over, on, in, or under flood control facilities, works, or lands under the jurisdiction of the board without obtaining an encroachment permit from the board, as prescribed. This bill would generally prohibit a person or local governmental agency from commencing construction of any flood facility or flood facility improvement that encroaches on a flood control facility, work, or land, as specified, under the jurisdiction of the board without obtaining a flood facility improvement permit from the board. This bill would authorize the board to order the removal or modification of an encroachment that was previously issued a permit by the board if the board makes a specified finding.

This bill would require any person or public agency requesting approval of either an encroachment permit or a flood facility improvement permit to, at the discretion of the board, either submit a reasonable filing fee prescribed by the board pursuant to regulation that covers but does not exceed the costs of the board and the department, or agree to pay the actual, reasonable costs of the board and the department to review and process the application. This bill would require the board, prior to the implementation of these filing fees or the adoption of a revised filing fee schedule, to perform a prescribed study related to the fees and, following the study, to provide notice to specified committees of the Legislature. This bill would require these fees to be deposited in the Central Valley Flood Protection Board Permit Fund, which this bill would create. This bill would provide that moneys in the fund are available, upon appropriation by the Legislature, as prescribed.

(3) Existing law authorizes the board, and the executive officer if delegated that authority, to issue an order directing a person or public agency to cease and desist from undertaking, or threatening to undertake, an activity that may encroach on levees, channels, or other flood control works under the jurisdiction of the board. Existing law requires the cease and desist order to be issued only if the person or public agency has failed to respond in a satisfactory manner to a prescribed notice provided, as specified. Existing law provides that a cease and desist order is effective upon its issuance and that copies are required to be served immediately by certified mail upon the person or agency subject to the order.

This bill would repeal these provisions and provide that it is unlawful for any person or public agency to interfere with or obstruct the

performance of the maintenance or operation of works or other plans adopted by the board within the jurisdiction of the board, as specified.

This bill would authorize the board, the executive officer, the department, or certain local agencies to issue a notice of violation, as specified, if it is determined that any person or public agency has undertaken, is threatening to undertake, or maintains any encroachment, improvement, or activity in violation of certain provisions. If the board or executive determines that any person or public agency has failed to adequately respond to a notice of violation, this bill would authorize the board or executive officer to issue an order directing that person or public agency to cease and desist, as specified. This bill would provide that if the board determines that any person or public agency has failed to correct a violation as required in a cease and desist order, the board may issue an enforcement order, as prescribed.

This bill would provide the board, executive officer, Department of Water Resources, and local agencies that operate and maintain facilities and works on behalf of the board with the authority, as prescribed, to take administrative or civil enforcement actions to abate and remedy any interference or potential interference with these works. This bill would establish the Flood Risk Management Fund in the State Treasury and require all funds received from these penalties to be paid into the fund and available, upon appropriation by the Legislature, to be expended by the board to carry out enforcement of these provisions.

~~Existing law provides for the Central Valley Flood Protection Board with the authority to construct and maintain various flood control works. Existing law authorizes the board, and the executive officer if delegated that authority, to issue an order directing a person or public agency to cease and desist from undertaking, or threatening to undertake, an activity that may encroach on levees, channels, or other flood control works under the jurisdiction of the board. Existing law requires the cease and desist order to be issued only if the person or public agency has failed to respond in a satisfactory manner to a prescribed notice provided as specified.~~

~~This bill would authorize notice to be provided by posting a written notice on the structure or facility that would be the subject of the order.~~

~~Existing law provides that a cease and desist order is effective upon its issuance and that copies are required to be served immediately by certified mail upon the person or agency subject to the order.~~

~~This bill would authorize service of the cease and desist order by posting the order on the structure or facility that is the subject of the order.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 8579 is added to the Water Code, to read:*

2 8579. (a) *Any aggrieved person shall have a right to judicial*
 3 *review of any decision or action of the board, or the executive*
 4 *officer acting pursuant to delegated authority, by filing a petition*
 5 *for a writ of mandate in accordance with Section 1094.5 of the*
 6 *Code of Civil Procedure, within 60 days after the decision or action*
 7 *has become final.*

8 (b) *For purposes of this section, an “aggrieved person” means*
 9 *any of the following:*

10 (1) *A person or public agency that, in person or through a*
 11 *representative, appeared at a public hearing of the board in*
 12 *connection with the decision or action appealed.*

13 (2) *A person or public agency that, by other appropriate means*
 14 *prior to the decision, informed the board of the nature of the person*
 15 *or public agency’s concerns.*

16 (3) *A person or public agency that for good cause was unable*
 17 *to appear, as described in paragraph (1), or inform the board, as*
 18 *described in paragraph (2).*

19 *SEC. 2. Article 6 (commencing with Section 8700) of Chapter*
 20 *3 of Part 4 of Division 5 of the Water Code is repealed.*

21 *SEC. 3. Article 6 (commencing with Section 8700) is added to*
 22 *Chapter 3 of Part 4 of Division 5 of the Water Code, to read:*

23

24 *Article 6. Enforcement of Unauthorized Activities and*
 25 *Encroachments*

26

27 8700. *It is unlawful for any person or public agency to interfere*
 28 *with or obstruct the performance of the maintenance or operation*
 29 *of works or other plans adopted by the board within the jurisdiction*
 30 *of the board, including facilities of the State Plan of Flood Control,*
 31 *if the state or a political subdivision of the state has given*
 32 *assurances to the Secretary of the Army pursuant to Article 2*

1 (commencing with Section 8615), that the state or a political
2 subdivision of the state will maintain and operate works after
3 completion in accordance with regulations prescribed by the
4 Secretary of the Army, and any facilities or works constructed as
5 part of an adopted plan of flood control or areas protected thereto.
6 The board, executive officer, department, and local agencies that
7 operate and maintain facilities and works on behalf of the board
8 shall have the authority, as set forth in this article, to take
9 administrative or civil enforcement actions to abate and remedy
10 any interference or potential interference with these works. The
11 unlawful interference proscribed by this article includes, but is
12 not limited to, the construction of any encroachment or
13 improvement without, or in violation of, the permits required by
14 this part or the maintenance of a previously permitted
15 encroachment that is deemed to interfere with these works pursuant
16 to Section 8702.

17 8701. (a) If the board, the executive officer, or department
18 determines that any person or public agency has undertaken, is
19 threatening to undertake, or maintains any encroachment,
20 improvement, or activity in violation of this part, the board,
21 executive officer, or department may issue a notice of violation to
22 the person or public agency responsible for the encroachment or
23 activity.

24 (b) A local agency that operates and maintains facilities within
25 the board's jurisdiction may also issue a notice of violation
26 pursuant to subdivision (a) if the board delegates the local agency
27 that authority. This subdivision shall not require the local agency
28 to accept that delegation of authority.

29 (c) A notice of violation shall include all of the following:

30 (1) A statement describing the activity, failure to act,
31 improvement, or encroachment that constitutes a violation of this
32 article.

33 (2) A statement of whether the activity, improvement, or
34 encroachment may be eligible for a permit from the board.

35 (3) The corrective actions that must be taken within a specified
36 time period.

37 (4) Whether the person or public agency may correct the
38 violation without obtaining prior approval from the board or
39 executive officer, or whether prior approval from the board or

1 executive officer must be obtained prior to taking a corrective
2 action.

3 (5) A statement that the notice of violation shall be referred to
4 the board and that the failure to take the requested actions within
5 the time specified may subject the person or public agency to a
6 cease and desist order and the imposition of further remedial and
7 enforcement actions, including, but not limited to, correction of
8 the violation by the board at the expense of the person or public
9 agency plus fines or penalties.

10 (6) The name, address, and telephone number of the state or
11 local agency that may be contacted for further information.

12 (d) The notice of violation shall be served in accordance with
13 Section 8703 and a copy transmitted to the board executive officer
14 within five business days of its issuance. The board or the executive
15 officer may amend the notice of violation, and, once served in
16 accordance with Section 8703, the amended notice of violation
17 shall supersede any notice of violation previously issued for the
18 same violation.

19 8701.2. (a) If the board or executive officer determines that
20 any person or public agency has failed to adequately respond to
21 a notice of violation, the board or executive officer may issue an
22 order directing that the person or public agency to whom the notice
23 of violation was issued cease and desist.

24 (b) A cease and desist order shall include a copy of the notice
25 of violation and shall require that the corrective actions described
26 in the notice of violation be completed within a specified time
27 period or the person or public agency shall be subject to an
28 enforcement order pursuant to Section 8701.4. A cease and desist
29 order shall be effective upon its issuance and shall be served
30 immediately pursuant to Section 8703.

31 (c) (1) A cease and desist order shall allow the person or
32 agency subject to the order to request a hearing before the board
33 within 30 days of being served with the order.

34 (2) If a person or public agency subject to a cease and desist
35 order fails to request a hearing within the time specified in
36 paragraph (1), the right to a hearing shall be deemed waived and
37 no hearing shall be required prior to issuance of an enforcement
38 order pursuant to Section 8701.4.

39 (d) If a person or public agency subject to a cease and desist
40 order requests a hearing in accordance with paragraph (1) of

1 subdivision (c), the board shall hold a public hearing on the cease
2 and desist order as follows:

3 (1) Notice of the hearing shall be provided pursuant to Section
4 8703 and shall include the date, time, and location of the hearing
5 and a statement that failure to appear at the hearing will constitute
6 a waiver of the right to a hearing and will result in the entry of a
7 default enforcement order.

8 (2) The hearing shall be held pursuant to the provisions of this
9 part and regulations adopted by the board.

10 (3) At the conclusion of the hearing, the board may affirm,
11 amend, or rescind the cease and desist order. If the board affirms
12 or modifies the cease and desist order and the person or agency
13 subject to the order fails to complete the corrective actions required
14 in the cease and desist order, no further hearing shall be required
15 prior to the issuance of a subsequent enforcement order by the
16 board.

17 (e) If a person or public agency subject to a cease and desist
18 order fails to comply with the order and does not request a hearing
19 in accordance with paragraph (1) of subdivision (c), the cease and
20 desist order shall be recorded with the appropriate county
21 recorder's office by the board against the person or public
22 agency's property associated with the order.

23 (f) When an enforcement action has been fully resolved,
24 including the payment of any costs and penalties, the executive
25 officer shall issue a certificate of abatement to the person or public
26 agency against whose property the cease and desist order was
27 recorded pursuant to subdivision (e). That person or public agency
28 may, at the person or public agency's expense, record the
29 certificate with the appropriate county recorder's office.

30 8701.4. (a) If the board determines that any person or public
31 agency has failed to correct a violation as required in a cease and
32 desist order issued pursuant to Section 8701.2, the board may
33 issue an enforcement order.

34 (b) An enforcement order may do the following:

35 (1) Order the removal and restoration of the encroachment,
36 improvement, or activity causing a violation of this part. The board,
37 its contractor, or its designee may conduct the removal and
38 restoration, the costs of which shall be collected from the
39 responsible person or public agency by whatever legal remedy is
40 available, including, but not limited to, the placement of a lien on

1 *the property owned by the person or public agency responsible*
2 *for the violation pursuant to Section 8704.2.*

3 *(2) Assess and require the payment of administrative penalties*
4 *as set forth in Section 8704.*

5 *(3) Order the initiation of a civil action by the board in the name*
6 *of the state for mandamus, injunction, or other appropriate remedy*
7 *authorized by law.*

8 *(4) Order any other actions or conditions as the board may*
9 *determine are necessary to avoid a potential adverse impact to*
10 *public safety or to ensure compliance with this part.*

11 *(c) The enforcement order shall be served immediately pursuant*
12 *to Section 8703.*

13 *(d) A person or public agency against which the board has*
14 *issued an enforcement order may seek judicial review of the*
15 *enforcement order pursuant to Section 8579. The enforcement*
16 *order shall be deemed effective upon issuance, but no removal*
17 *actions may be taken by the board until after the time for judicial*
18 *review has passed.*

19 *(e) This section shall not be construed to authorize the issuance*
20 *of an enforcement order against a local public agency undertaking*
21 *any lawful activity pursuant to a declaration of emergency by the*
22 *governing body of the local public agency or the board of*
23 *supervisors of the county in which the activity is being or may be*
24 *undertaken.*

25 *8702. (a) The board may order the removal or modification*
26 *of an encroachment that was previously issued a permit by the*
27 *board if the board makes one of the following findings:*

28 *(1) The encroachment presents a threat to the structural integrity*
29 *of the levee, channel, flood control work, or other facility of the*
30 *State Plan of Flood Control.*

31 *(2) The encroachment impairs the functional capability of the*
32 *levee, channel, or flood control work to fulfill its particular*
33 *intended role in the overall flood control plan.*

34 *(3) The encroachment is not in conformance with an adopted*
35 *plan of flood control, state law, board regulations, or, in the case*
36 *of facilities of the State Plan of Flood Control where the board*
37 *has given assurances to the United States, the standards and*
38 *regulations of the Secretary of the Army.*

39 *(b) Routine maintenance that includes the removal or*
40 *modification of abandoned property, fences, gates, and vegetation*

1 *on the levee structure and other flood control structure shall not*
2 *be subject to this section.*

3 *8703. Notice and service required by this article shall be*
4 *provided to the person or public agency believed to be responsible*
5 *for the violation and the owner of the property on which the*
6 *violation occurred or is threatened to occur by one of the following*
7 *means:*

8 *(a) Hand delivery.*

9 *(b) Certified mail.*

10 *(c) If the person or agency cannot be reached or reasonably*
11 *notified pursuant to subdivision (a) or (b), by placing a copy of*
12 *the notice or order on the encroachment or property.*

13 *8704. (a) Any person or public agency that undertakes an*
14 *activity, improvement, or encroachment that is in violation of this*
15 *part or that is inconsistent with any permit or cease and desist*
16 *order previously issued by the board or executive officer may be*
17 *assessed a civil penalty in an amount not greater than fifteen*
18 *thousand dollars (\$15,000) per day for each day in which the*
19 *violation occurs or persists.*

20 *(b) Administrative penalties may be assessed by the board in*
21 *the same manner as civil penalties described in subdivision (a)*
22 *upon issuance of an enforcement order pursuant to Section 8701.4,*
23 *but may not be less than five hundred dollars (\$500) or exceed*
24 *fifty thousand dollars (\$50,000) for a single violation.*

25 *(c) In determining the amount of liability pursuant to*
26 *subdivisions (a) and (b), the following factors shall be considered:*

27 *(1) The nature, circumstance, extent, and gravity of the violation.*

28 *(2) Whether the violation was committed intentionally or*
29 *knowingly.*

30 *(3) Whether the violation is susceptible to restoration or other*
31 *remedial measures.*

32 *(4) Whether the function of the levee, channel, or other flood*
33 *control work is affected by the violation.*

34 *(5) The cost to the state of bringing the action.*

35 *(6) With respect to the person or public agency responsible for*
36 *the violation, any voluntary restoration or remedial measures*
37 *undertaken, any prior history of violations, the degree of*
38 *culpability, economic profits, if any, resulting from, or expected*
39 *to result as a consequence of, the violation, and other matters the*
40 *board deems relevant.*

1 (d) Any penalties assessed shall be required to be paid within
2 30 calendar days.

3 (e) No person or public agency shall be subject to both civil
4 and administrative penalties for the same violation.

5 (f) After the time for judicial review pursuant to Section 8579
6 has passed, the board may apply to the clerk of the appropriate
7 court in the county in which the administrative penalties were
8 imposed for a judgment to collect the penalties assessed. The
9 application, which shall include a certified copy of the board
10 action, constitutes a sufficient showing to warrant issuance of the
11 judgment. The clerk shall enter judgment immediately in conformity
12 with the application. The judgment so entered has the same force
13 and effect, and is subject to all the provisions of law relating to,
14 a judgment in a civil action and may be enforced in the same
15 manner as any other judgment of the court in which it is entered.

16 (g) After the time for judicial review pursuant to Section 8579
17 has passed, the board may also recover assessed penalties through
18 a lien against the property of the person or agency responsible for
19 the violation pursuant to Section 8704.2.

20 (h) All funds generated by the imposition of penalties pursuant
21 to this section shall be deposited into the Flood Risk Management
22 Fund as set forth in Section 8705.

23 (i) In addition to the penalties described in this section, any
24 individual who erects or maintains a violation that is found to be
25 the proximate cause of a failure of a levee or other flood control
26 facility shall be liable for additional damages at law, including
27 any liability that may be incurred by the state.

28 8704.2. (a) The board, after providing the opportunity for a
29 hearing, shall have the authority to record a lien with the county
30 clerk in the county of this state where the person or agency's
31 property responsible for the violation is located, to recover any
32 and all of the following:

33 (1) Costs incurred in abating, removing, and restoring a
34 violation, including, but not limited to, costs incurred in seeking
35 removal, abatement, and restoration pursuant to this part.

36 (2) Costs incurred in the summary abatement of emergencies.

37 (3) Civil or administrative penalties assessed pursuant to this
38 article.

39 (4) Attorney's fees associated with actions to enforce this part.

1 **(b)** *A lien recorded pursuant to this section shall have the same*
2 *force, effect, and priority as a judgment lien.*

3 8704.4. *The remedies provided by this article are not exclusive*
4 *of, but shall be concurrent with and in addition to, any other*
5 *remedy, penalty, or sanction that may exist by law, civil or*
6 *criminal. The board may enforce compliance with the provisions*
7 *of this article by mandamus, mandatory injunction, or by any other*
8 *appropriate remedy authorized by law. The action or proceeding*
9 *may be commenced and maintained by the board in the name of*
10 *the state.*

11 8705. *The Flood Risk Management Fund is hereby established*
12 *in the State Treasury. All funds received from penalties pursuant*
13 *to this article shall be paid into the fund. Upon appropriation by*
14 *the Legislature, the moneys in the fund shall be expended by the*
15 *board to carry out enforcement pursuant to this part, including*
16 *the costs of the abatement and restoration of violations and recent*
17 *litigation.*

18 8706. *The board may maintain actions in the name of the state*
19 *to compel by injunction the owner or owners of any bridge, trestle,*
20 *wire line, viaduct, embankment, or other structure or obstruction*
21 *that shall be intersected, traversed, or crossed by any bypass,*
22 *drainage canal, channel, or overflow channel to construct or alter*
23 *any structure in order to offer a minimum of obstruction to the*
24 *free flow of water. In the case of existing works, the board may*
25 *compel the removal or alteration of structures or obstructions that*
26 *impede the free flow of water.*

27 8706.5. *Any use of land, right of way, or easement within the*
28 *jurisdiction of the board, whether for cultivation, planting of crops,*
29 *trees or other vegetation, storage or disposal of material, or other*
30 *encroachment upon, improvement of, or use of that land, right of*
31 *way, or easement that does or may interfere with or obstruct*
32 *operation or maintenance in violation of this part constitutes a*
33 *public nuisance, and the board may commence and maintain a*
34 *suit in the name of the people of the state for the prevention or*
35 *abatement of that nuisance.*

36 8707. *If the board or Attorney General prevails in a civil action*
37 *to enforce this part, the board or Attorney General shall be*
38 *awarded attorney's fees and costs, including, but not limited to,*
39 *any fees and costs incurred by its agents.*

1 8708. (a) *Nothing in this article shall be construed to prevent*
2 *the department, the board, the executive officer, or a*
3 *levee-maintaining agency from taking any action to prevent an*
4 *imminent failure of a levee, to operate a flood control feature, or*
5 *to take other emergency action necessary to protect the public*
6 *welfare.*

7 (b) *To the extent emergency action is required to abate an*
8 *action, any aggrieved person may request a hearing before the*
9 *board within 30 days after the action has been commenced.*

10 (c) *After a public hearing, by request or by its own motion, the*
11 *entity that has carried out the abatement functions pursuant to*
12 *this section may seek reimbursement of its abatement costs and*
13 *may pursue any legal remedies available to recover its costs,*
14 *including imposing a lien pursuant to Section 8704.2.*

15 SEC. 4. *Section 8710.2 is added to the Water Code, to read:*

16 8710.2. (a) *No person or governmental agency may place an*
17 *encroachment over, on, in, or under flood control facilities, works,*
18 *or lands under the jurisdiction of the board, including, but not*
19 *limited to, those lands required for a State Plan of Flood Control,*
20 *without obtaining an encroachment permit from the board.*

21 (b) *At the board's discretion, any encroachment permit issued*
22 *shall be subject to conditions necessary to ensure compliance with*
23 *this part, including, but not limited to, the condition that the permit*
24 *be recorded to the affected parcels with the county recorder's*
25 *office.*

26 (c) *Levee maintenance and minor repairs by a local public*
27 *agency that operates and maintains facilities and works on behalf*
28 *of the board do not require a permit pursuant to this section.*

29 (d) *Any person or public agency requesting approval of an*
30 *encroachment permit shall, at the discretion of the board, do either*
31 *of the following:*

32 (1) *Submit a reasonable filing fee prescribed by the board*
33 *pursuant to regulation that covers but does not exceed the costs*
34 *of the board and the department to review and process the*
35 *application for the type of encroachment permit.*

36 (2) *Agree to pay the actual, reasonable costs of the board and*
37 *the department to review and process the application.*

38 SEC. 5. *Section 8710.3 is added to the Water Code, to read:*

39 8710.3. (a) *No state or local governmental agency may*
40 *commence construction of any flood facility or flood facility*

1 *improvement, including, but not limited to, conservation and*
2 *recreation elements, that encroaches on a flood control facility,*
3 *work, or land required for a State Plan of Flood Control under*
4 *the jurisdiction of the board without obtaining a flood facility*
5 *improvement permit from the board.*

6 *(b) At the board's discretion, any flood facility improvement*
7 *permit issued shall be subject to conditions necessary to ensure*
8 *compliance with this part, including, but not limited to, the*
9 *condition that the permit be recorded to the affected parcels with*
10 *the county recorder's office.*

11 *(c) Levee maintenance and minor repairs by a local public*
12 *agency that operates and maintains facilities and works on behalf*
13 *of the board do not require a permit pursuant to this section.*

14 *(d) Any person or public agency requesting approval of a flood*
15 *facility improvement permit shall, at the discretion of the board,*
16 *do either of the following:*

17 *(1) Submit a reasonable filing fee prescribed by the board*
18 *pursuant to regulation that covers but does not exceed the costs*
19 *of the board and the department to review and process the*
20 *application for the type of flood facility improvement permit.*

21 *(2) Agree to pay the actual, reasonable costs of the board and*
22 *the department to review and process the application.*

23 *SEC. 6. Section 8710.4 is added to the Water Code, to read:*

24 *8710.4. (a) Prior to the implementation of filing fees or the*
25 *adoption of a revised filing fee schedule by the board pursuant to*
26 *Section 8710.2 or 8710.3, the board shall do all of the following:*

27 *(1) Perform a study to consider whether, and for what services,*
28 *filing fees should be charged by the board. In conjunction with the*
29 *study, the board shall hold at least two hearings, one in the*
30 *Sacramento River watershed and one in the San Joaquin River*
31 *watershed. In conducting this study, the board shall consider any*
32 *relevant factor, including the following:*

33 *(A) The actual cost to the board of processing an application.*

34 *(B) Whether charging the actual cost would encourage*
35 *applicants to bypass the filing system and instead install illegal*
36 *encroachments.*

37 *(C) Whether the work to be performed is an improvement to the*
38 *State Plan of Flood Control and inures to the benefit of the state.*

39 *(D) Whether different filing fees might be appropriate for*
40 *different classes of applications.*

1 (E) Such other factors as may be appropriate.
 2 (2) Following the study, provide notice to the Senate Committee
 3 on Natural Resources and Water, the Assembly Committee on
 4 Water, Parks and Wildlife, and the Senate and Assembly
 5 Appropriations Committees.

6 (b) Any moneys collected pursuant to the filing fees imposed by
 7 Section 8710.2 or 8710.3 shall be deposited in the Central Valley
 8 Flood Protection Board Permit Fund, which is hereby created in
 9 the State Treasury. Moneys in the fund shall be available upon
 10 appropriation by the Legislature for the purposes of Sections
 11 8710.2 and 8710.3.

12 SEC. 7. Section 8732 of the Water Code is amended to read:
 13 8732. The board may hold a hearing or partial hearing before
 14 a committee of one or more members of the board, before a
 15 qualified neutral hearing officer designated by the board president,
 16 or before the ~~general manager~~ executive officer or chief engineer
 17 of the board, at any place within the State state.

18 SECTION 1. ~~Section 8709.5 of the Water Code is amended to~~
 19 ~~read:~~

20 ~~8709.5.—(a) Notwithstanding Section 8709 or 8709.4, if the~~
 21 ~~board, or the executive officer if delegated authority by the board,~~
 22 ~~determines that any person or public agency has undertaken, or is~~
 23 ~~threatening to undertake, any activity that may encroach on levees,~~
 24 ~~channels, or other flood control works under the jurisdiction of~~
 25 ~~the board, the board or executive officer may issue an order~~
 26 ~~directing that person or public agency to cease and desist. The~~
 27 ~~order may also be issued to enforce any requirement of a permit~~
 28 ~~or any requirement under this part that is subject to the jurisdiction~~
 29 ~~of the board.~~

30 ~~(b) (1) The cease and desist order shall be issued only if the~~
 31 ~~person or public agency has failed to respond in a satisfactory~~
 32 ~~manner to any of the following:~~

33 ~~(A) An oral notice given in person or by telephone, followed~~
 34 ~~by a written confirmation.~~

35 ~~(B) A written notice given by certified mail or hand delivered~~
 36 ~~to the landowner or the person performing the activity.~~

37 ~~(C) A written notice posted on the structure or facility that~~
 38 ~~would be the subject of the order.~~

39 ~~(2) The notice shall include the following:~~

1 ~~(A) A description of the activity that meets the criteria of~~
2 ~~subdivision (a) of Section 8709.4 or a statement that the described~~
3 ~~activity constitutes an encroachment that is in violation of this~~
4 ~~article because it is not authorized by a valid permit.~~

5 ~~(B) A statement that the described activity shall immediately~~
6 ~~cease or the alleged violator may receive a cease and desist order,~~
7 ~~the violation of which may subject the violator to fines or penalties.~~

8 ~~(C) The name, address, and telephone number of the staff~~
9 ~~member who is to be contacted for further information.~~

10 ~~(e) The cease and desist order may be subject to terms and~~
11 ~~conditions as the board or the executive officer may determine are~~
12 ~~necessary to avoid an unreasonable impact on public safety.~~

13 ~~(d) The cease and desist order shall be effective upon its~~
14 ~~issuance, and copies shall be served immediately by certified mail~~
15 ~~upon the person or agency subject to the order or by posting the~~
16 ~~order on the structure or facility that is the subject of the order.~~