

AMENDED IN SENATE MAY 24, 2013
AMENDED IN SENATE APRIL 29, 2013
AMENDED IN SENATE APRIL 18, 2013
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 8732 of, to add Section 8579 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.

(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.

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~~ *with*, obstruct the ~~performance of the maintenance~~ *performance, maintenance*, or operation of works or other plans adopted by the board within the jurisdiction of the board, ~~as specified~~ *of, or otherwise take actions that may adversely affect facilities of the State Plan of Flood Control, designated floodways, or streams that are regulated by the board.* This bill would authorize the ~~board~~ *board, following notice and opportunity for a hearing*, 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 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, *flood system*, improvement, or activity in violation of certain provisions. If the board or executive officer 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~~ *require* 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~~ *shall hold an enforcement hearing and may, at the conclusion of the hearing, 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~~ *facilities of the State Plan of Flood Control, designated floodways, or streams that are regulated by the board*. 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. The bill would require the board to adopt emergency regulations necessary to implement these provisions.

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 *seek*
 3 *judicial review of any decision or action of permit or enforcement*
 4 *order issued by the board, or the executive officer acting pursuant*
 5 *to delegated authority, board* by filing a petition for a writ of
 6 mandate in accordance with Section 1094.5 of the Code of Civil
 7 Procedure, within ~~60~~ 30 days after the decision or action has
 8 become final.
 9 (b) For purposes of this section, an “aggrieved person” means
 10 ~~any of the following:~~
 11 ~~(1) A~~ *any person or public agency that, in person or through a*
 12 *representative, appeared at a public hearing of the board in*
 13 *connection with the decision or action* ~~appealed~~ *appealed, or that,*
 14 *by other appropriate means before the decision, informed the*
 15 *board of the nature of their concerns.*
 16 ~~(2) A person or public agency that, by other appropriate means~~
 17 ~~prior to the decision, informed the board of the nature of the person~~
 18 ~~or public agency’s concerns.~~
 19 ~~(3) A person or public agency that for good cause was unable~~
 20 ~~to appear, as described in paragraph (1), or inform the board, as~~
 21 ~~described in paragraph (2).~~
 22 SEC. 2. Article 6 (commencing with Section 8700) of Chapter
 23 3 of Part 4 of Division 5 of the Water Code is repealed.

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

3
 4 Article 6. Enforcement of Unauthorized Activities and
 5 Encroachments
 6

7 8700. (a) It is unlawful for any person or public agency to
 8 interfere ~~with or with~~, obstruct the performance of the maintenance
 9 ~~performance, maintenance~~, or operation of works or other plans
 10 adopted by the board within the jurisdiction of the board, including
 11 facilities of the State Plan of Flood Control, if the state or a political
 12 subdivision of the state has given assurances to the Secretary of
 13 the Army pursuant to Article 2 (commencing with Section 8615);
 14 that the state or a political subdivision of the state will maintain
 15 and operate works after completion in accordance with regulations
 16 prescribed by the Secretary of the Army, and any facilities or works
 17 constructed as part of an adopted plan of flood control or areas
 18 protected thereto. ~~The of, or otherwise take actions that may~~
 19 *adversely affect facilities of the State Plan of Flood Control,*
 20 *designated floodways, or streams that are regulated by the board.*

21 (b) ~~The~~ board, executive officer, department, and local agencies
 22 that operate and maintain facilities and works on behalf of the
 23 board shall have the authority, as set forth in this article, to take
 24 administrative or civil enforcement actions to abate and remedy
 25 any interference or potential interference ~~with these works. The~~
 26 ~~unlawful interference proscribed by this article includes, but is not~~
 27 ~~limited to, the construction of any encroachment or improvement~~
 28 ~~without, or in violation of, the permits required by this part or the~~
 29 ~~maintenance of a previously permitted encroachment that is deemed~~
 30 ~~to interfere with these works pursuant to Section 8702 proscribed~~
 31 *in subdivision (a).*

32 8701. (a) If the ~~board, board or the executive officer, or~~
 33 ~~department officer~~ determines that any person or public agency
 34 has undertaken, is threatening to undertake, or maintains any
 35 encroachment, *flood system* improvement, or activity in violation
 36 of this part, the ~~board, board or the executive officer, or~~
 37 ~~department officer~~ may issue a notice of violation to the person or
 38 public agency responsible for the ~~encroachment~~ *encroachment,*
 39 *flood system improvement,* or activity.

1 (b) ~~A~~ *The department or a local agency that operates and*
2 ~~maintains facilities within the board's jurisdiction~~ may also issue
3 a notice of violation pursuant to subdivision (a) *for facilities within*
4 *the board's jurisdiction that the department or local agency*
5 *operates and maintains* if the board delegates the ~~local~~ agency that
6 authority. This subdivision shall not require the *department or*
7 local agency to accept that delegation of authority.

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

9 (1) A statement describing the activity, failure to act, *flood*
10 *system* improvement, or encroachment that constitutes a violation
11 of this ~~article~~ *article, including the sections of this part or board*
12 *regulations that are being violated.*

13 (2) A statement of whether the activity, *flood system*
14 improvement, or encroachment may be eligible for a permit from
15 the board.

16 (3) The corrective actions that shall be taken within a specified
17 time period.

18 (4) Whether the person or public agency may correct the
19 violation without obtaining prior approval from the board or
20 executive officer, or whether prior approval from the board or
21 executive officer must be obtained prior to taking a corrective
22 action.

23 (5) A statement that the notice of violation shall be referred to
24 the board and that the failure to take the requested actions within
25 the time specified may subject the person or public agency to a
26 cease and desist order and the imposition of further remedial and
27 enforcement actions, including, but not limited to, correction of
28 the violation by the board at the ~~expense of the person~~ *person's*
29 or public ~~agency plus fines or~~ *agency's expense and* penalties.

30 (6) The name, address, and telephone number of the state or
31 ~~local~~ *issuing* agency that may be contacted for further information.

32 (d) The notice of violation shall be served in accordance with
33 Section 8703 and a copy transmitted to the executive officer within
34 five ~~business~~ *calendar* days of its issuance. The board or the
35 executive officer may amend the notice of violation, and, once
36 served in accordance with Section 8703, the amended notice of
37 violation shall supersede any notice of violation previously issued
38 for the same violation.

39 8701.2. (a) If the board or executive officer determines that
40 any person or public agency has failed to adequately respond to a

1 notice of violation, the board or executive officer may issue an
2 order directing that the person or public agency to whom the notice
3 of violation was issued *to cease and desist. Nothing shall prevent*
4 *the board or executive officer from issuing a cease and desist order*
5 *in cases where it deems a notice of violation would not to be in*
6 *the best interest of the state.*

7 ~~(b) A cease and desist order shall include a copy of the notice~~
8 ~~of violation and shall require that the corrective actions described~~
9 ~~in the notice of violation be completed within a specified time~~
10 ~~period or the person or public agency shall be subject to an~~
11 ~~enforcement order pursuant to Section 8701.4. A cease and desist~~
12 ~~order shall be effective upon its issuance and shall be served~~
13 ~~immediately pursuant to Section 8703.~~

14 ~~(c) (1) A cease and desist order shall allow the person or agency~~
15 ~~subject to the order to request a hearing before the board within~~
16 ~~30 days of being served with the order.~~

17 ~~(2) If a person or public agency subject to a cease and desist~~
18 ~~order fails to request a hearing within the time specified in~~
19 ~~paragraph (1), the right to a hearing shall be deemed waived and~~
20 ~~no hearing shall be required prior to issuance of an enforcement~~
21 ~~order pursuant to Section 8701.4.~~

22 ~~(d) If a person or public agency subject to a cease and desist~~
23 ~~order requests a hearing in accordance with paragraph (1) of~~
24 ~~subdivision (c), the board shall hold a public hearing on the cease~~
25 ~~and desist order as follows:~~

26 ~~(1) Notice of the hearing shall be provided pursuant to Section~~
27 ~~8703 and shall include the date, time, and location of the hearing~~
28 ~~and a statement that failure to appear at the hearing will constitute~~
29 ~~a waiver of the right to a hearing and will result in the entry of a~~
30 ~~default enforcement order.~~

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

33 ~~(3) At the conclusion of the hearing, the board may affirm,~~
34 ~~amend, or rescind the cease and desist order. If the board affirms~~
35 ~~or modifies the cease and desist order and the person or agency~~
36 ~~subject to the order fails to complete the corrective actions required~~
37 ~~in the cease and desist order, no further hearing shall be required~~
38 ~~prior to the issuance of a subsequent enforcement order by the~~
39 ~~board.~~

1 ~~(e) If a person or public agency subject to a cease and desist~~
2 ~~order fails to comply with the order and does not request a hearing~~
3 ~~in accordance with paragraph (1) of subdivision (c), the cease and~~
4 ~~desist order shall be recorded with the appropriate county recorder's~~
5 ~~office by the board against the person or public agency's property~~
6 ~~associated with the order.~~

7 ~~(f) When an enforcement action has been fully resolved,~~
8 ~~including the payment of any costs and penalties, the executive~~
9 ~~officer shall issue a certificate of abatement to the person or public~~
10 ~~agency against whose property the cease and desist order was~~
11 ~~recorded pursuant to subdivision (e). That person or public agency~~
12 ~~may, at the person or public agency's expense, record the certificate~~
13 ~~with the appropriate county recorder's office.~~

14 *(b) A cease and desist order shall do all of the following:*

15 *(1) Include a copy of the notice of violation.*

16 *(2) Be effective upon its issuance and served immediately*
17 *pursuant to Section 8703.*

18 *(3) Require that the corrective actions described in the notice*
19 *of violation be completed within a specified time period or the*
20 *person or public agency shall be subject to an enforcement order*
21 *pursuant to Section 8701.4.*

22 *(4) Provide a date, time, and location of a public meeting before*
23 *the board at which the person, entity, or public agency may appear*
24 *to contest the cease and desist order.*

25 *(c) The meeting noticed pursuant to paragraph (4) of subdivision*
26 *(b) shall be consistent with all of the following:*

27 *(1) The meeting shall be scheduled at least 30 days after*
28 *issuance of the cease and desist order and shall be held pursuant*
29 *to the provisions of this part and regulations adopted by the board.*

30 *(2) At the meeting, the board may affirm, amend, modify, stay,*
31 *or rescind the cease and desist order.*

32 *(3) If a person or public agency subject to a cease and desist*
33 *order fails to appear at the meeting, the cease and desist order*
34 *may be approved by default.*

35 8701.4. ~~(a) If the board determines that any person or public~~
36 ~~agency has failed to correct a violation as required in a cease and~~
37 ~~desist order issued pursuant to Section 8701.2, the board may issue~~
38 ~~an enforcement order or executive officer determines that any~~
39 ~~person or public agency has failed to correct a violation as outlined~~

1 *in a cease and desist order, the board shall hold an enforcement*
2 *hearing to consider the issuance of an enforcement order.*

3 ~~(b) An enforcement order may do the following:~~

4 ~~(b) The enforcement hearing shall comply with all of the~~
5 ~~following:~~

6 ~~(1) Notice of the hearing shall be provided at least 30 days~~
7 ~~before the hearing is scheduled pursuant to Section 8703, unless~~
8 ~~it is determined that the public interest necessitates a shorter notice~~
9 ~~period.~~

10 ~~(2) Notice of the hearing shall include a proposed enforcement~~
11 ~~order, including any proposed administrative penalties.~~

12 ~~(3) The hearing shall be held pursuant to the provisions of this~~
13 ~~part and regulations adopted by the board.~~

14 ~~(4) If the person or public agency subject to the cease and desist~~
15 ~~order fails to appear at the hearing, the right to a hearing will be~~
16 ~~deemed waived.~~

17 ~~(c) At the conclusion of the hearing, the board may approve,~~
18 ~~amend, or reject the proposed enforcement order and thereby take~~
19 ~~any and all of the following actions:~~

20 ~~(1) Order the removal and restoration removal, modification,~~
21 ~~or abatement of the encroachment, flood system improvement, or~~
22 ~~activity causing a violation of this part. The board, its contractor,~~
23 ~~or its designee may conduct the removal and restoration, the costs~~
24 ~~of which shall be collected from the responsible person or public~~
25 ~~agency by whatever legal remedy is available, including, but not~~
26 ~~limited to, the placement of a lien on the property owned by the~~
27 ~~person or public agency responsible for the violation pursuant to~~
28 ~~Section 8704.2.~~

29 ~~(2) Assess and require the payment of administrative penalties~~
30 ~~as set forth in Section 8704.~~

31 ~~(3) Order the initiation of a civil action by the board in the name~~
32 ~~of the state for mandamus, injunction, or other appropriate remedy~~
33 ~~authorized by law.~~

34 ~~(4) Order any other actions or conditions as the board may~~
35 ~~determine are necessary to avoid a potential adverse impact to~~
36 ~~public safety or to ensure compliance with this part.~~

37 ~~(e) The enforcement order shall be served immediately pursuant~~
38 ~~to Section 8703.~~

39 ~~(d) A person or public agency against which the board has issued~~
40 ~~an enforcement order may seek judicial review of the enforcement~~

1 order pursuant to Section 8579. The enforcement order shall be
2 deemed effective upon issuance, but a removal action shall not be
3 taken by the board until after the time for judicial review has
4 passed.

5 (e) ~~This section shall not be construed to authorize the issuance
6 of an enforcement order against a local public agency undertaking
7 any lawful activity pursuant to a declaration of emergency by the
8 governing body of the local public agency or the board of
9 supervisors of the county in which the activity is being or may be
10 undertaken.~~

11 (2) *Order the restoration of the site.*

12 (3) *Impose and require the payment of administrative penalties
13 as set forth in Section 8704.*

14 (4) *Initiate a civil action in the name of the state for mandamus,
15 injunction, civil penalties, or other appropriate remedy authorized
16 by law.*

17 (5) *Order any other actions or conditions as the board may
18 determine are necessary to resolve the violation and ensure
19 compliance with this part.*

20 (d) *The enforcement order shall state any necessary findings
21 and shall be served immediately pursuant to Section 8703.*

22 (e) *A person, entity, or public agency against which the board
23 has issued an enforcement order may seek judicial review of the
24 enforcement order pursuant to Section 8579. The enforcement
25 order shall be deemed effective upon issuance.*

26 (f) *If the board orders removal and restoration pursuant to this
27 part, the board, its contractor, or its designee may conduct the
28 removal and restoration, the costs of which shall be collected from
29 the responsible person or public agency by whatever legal remedy
30 is available, including, but not limited to, the placement of a lien
31 on the property owned by the person or public agency responsible
32 for the violation pursuant to Section 8704.2. Removal or
33 restoration actions shall not be taken by the board until after the
34 time for judicial review has passed.*

35 (g) *This section does not authorize the issuance of an
36 enforcement order as to any lawful activity undertaken by a public
37 agency pursuant to Section 8708.*

38 8702. (a) ~~The board~~ board, following notice and opportunity
39 for a hearing, may order the removal or modification of an
40 encroachment that was previously issued a permit by the board if

1 the board makes one of the following findings *based on substantial*
2 *evidence*:

3 (1) The encroachment presents a threat to the structural integrity
4 of the levee, channel, flood control work, or other facility of the
5 State Plan of Flood Control.

6 (2) The encroachment impairs the functional capability of the
7 levee, ~~channel, or channel,~~ flood control ~~work work,~~ or other
8 *facility of the State Plan of Flood Control* to fulfill its particular
9 intended role in the overall flood control plan.

10 (3) The encroachment is not in conformance with ~~an adopted~~
11 ~~plan of flood control,~~ state law, board regulations, or, in the case
12 of facilities of the State Plan of Flood Control ~~where the board has~~
13 ~~given assurances to the United States,~~ the standards and regulations
14 of the Secretary of the Army.

15 (b) Routine maintenance *by the board, the executive officer, or*
16 *local agencies that operate and maintain facilities and works on*
17 *behalf of the board* that includes the removal or modification of
18 abandoned property, fences, gates, and vegetation ~~on the levee~~
19 ~~structure and a levee or other flood control structure~~ shall not be
20 subject to this section.

21 (c) *The removal of previously permitted encroachments shall*
22 *not be subject to administrative or civil penalties pursuant to*
23 *Section 8704 or 8704.1.*

24 8703. Notice and service required by this article shall be
25 provided to the person or public agency believed to be responsible
26 for the violation and the owner of the property on which the
27 violation occurred or is threatened to occur by one of the following
28 means:

29 (a) Hand delivery.

30 (b) Certified mail.

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

34 8704. (a) ~~Any Civil penalties may be imposed by a court of~~
35 *competent jurisdiction against any person or public agency that*
36 *undertakes an activity, flood system improvement, or encroachment*
37 *that is in violation of this part or that is inconsistent with any permit*
38 *or cease and desist order previously issued by the board or*
39 *executive officer may be assessed a civil penalty in an amount not*
40 *greater than fifteen thousand dollars (\$15,000) per day for each*

1 ~~day in which the violation occurs or persists in an amount not less~~
2 ~~than five hundred dollars (\$500) and not greater than thirty~~
3 ~~thousand dollars (\$30,000).~~

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

9 ~~(b) In addition to any other penalties, civil penalties may be~~
10 ~~imposed by a court of competent jurisdiction against any person~~
11 ~~or public agency that intentionally and knowingly undertakes an~~
12 ~~activity, flood system improvement, or encroachment that is in~~
13 ~~violation of this part or that is inconsistent with any permit or~~
14 ~~cease and desist order previously issued by the board or executive~~
15 ~~officer in an amount that shall not be less than one thousand~~
16 ~~dollars (\$1,000) or more than fifteen thousand dollars (\$15,000)~~
17 ~~per day for each day in which the encroachment persists.~~

18 ~~(c) In determining the amount of liability pursuant to~~
19 ~~subdivisions (a) and (b), the following factors shall be considered:~~

20 ~~(1) The nature, circumstance, extent, and gravity of the violation.~~

21 ~~(2) Whether the violation was committed intentionally or~~
22 ~~knowingly.~~

23 ~~(3)~~

24 ~~(2) Whether the violation is susceptible to restoration or other~~
25 ~~remedial measures.~~

26 ~~(4)~~

27 ~~(3) Whether the function of the levee, channel, or other flood~~
28 ~~control work is affected by the violation.~~

29 ~~(5)~~

30 ~~(4) The cost to the state of bringing the action.~~

31 ~~(6)~~

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

38 ~~(d) Any penalties assessed shall be required to be paid within~~
39 ~~30 calendar days.~~

1 (d) Civil penalties may be imposed by a court of competent
2 jurisdiction against any person, entity, or public agency that
3 intentionally or negligently violates any cease and desist order
4 issued, reissued, or amended by the board, or any restoration
5 order issued, reissued, or amended by the board in an amount that
6 shall not exceed six thousand dollars (\$6,000) for each day in
7 which that violation persists. Any actual penalty imposed shall be
8 reasonably proportionate to the damage suffered as a consequence
9 of the violation.

10 (e) A person or public agency shall not be subject to both civil
11 and administrative penalties for the same violation.

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

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

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

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

36 8704.1. (a) Administrative penalties may be imposed by the
37 board in the same manner as civil penalties described in Section
38 8704, upon an enforcement hearing and issuance of an enforcement
39 order pursuant to Section 8701.4, but shall not be less than five

1 *hundred dollars (\$500) or exceed fifty thousand dollars (\$50,000)*
2 *for a single violation.*

3 *(b) In imposing penalties, the board shall express its rationale*
4 *for the amount and specifically address the factors listed under*
5 *subdivision (c) of Section 8704.*

6 *(c) Any penalties imposed shall be paid within 60 days.*

7 *(d) A person or public agency shall not be subject to both civil*
8 *and administrative penalties for the same violation.*

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

20 ~~8704.2. (a) The board, after providing the opportunity for a~~
21 ~~hearing, Pursuant to subdivision (f) of Section 8701.4, the board~~
22 ~~or the board's designee shall have the authority to record a lien~~
23 ~~with the county clerk in the county of this state where the person~~
24 ~~person's or agency's property responsible for the violation is~~
25 ~~located, to recover any and all of the following:~~

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

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

30 ~~(3) Civil or administrative penalties assessed pursuant to this~~
31 ~~article.~~

32 ~~(4)~~

33 (3) Attorney's fees associated with actions to enforce this part.

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

36 *(c) Before recording a lien, the board shall provide notice and*
37 *an opportunity for a hearing to contest the amount of the lien.*

38 *(1) Notice shall be provided at least 20 days before the hearing*
39 *pursuant to Section 8703.*

1 (2) *The hearing required by this section may be satisfied by an*
2 *enforcement order hearing pursuant to Section 8701.4 or, in the*
3 *summary abatement of emergencies, a hearing pursuant to Section*
4 *8708.*

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

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

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

29 ~~8706.5. Any use of land, right of way, or easement within the~~
30 ~~jurisdiction of the board, whether for cultivation, planting of crops,~~
31 ~~trees or other vegetation, storage or disposal of material, or other~~
32 ~~encroachment upon, improvement of, or use of that land, right of~~
33 ~~way, or easement that does or may interfere with or obstruct~~
34 ~~operation or maintenance in violation of this part~~ *Any activity that*
35 *does or may interfere with, obstruct the performance, maintenance,*
36 *or operation of, or otherwise adversely affect facilities of the State*
37 *Plan of Flood Control, designated floodways, or streams that are*
38 *regulated by the board constitutes a public nuisance, and the board*
39 *may commence and maintain a suit in the name of the people of*
40 *the state for the prevention or abatement of that nuisance.*

1 8707. If the board or Attorney General prevails in a civil action
2 to enforce this part, *or if a local agency prevails in a civil action*
3 *to seek abatement costs under subdivision (b) of Section 8708 or*
4 *removal or restoration costs as the board's designee under*
5 *subdivision (f) of Section 8701.4, the ~~board or board,~~ Attorney*
6 ~~General~~ *General, or local agency shall be awarded attorney's fees*
7 *and costs, including, but not limited to, any fees and costs incurred*
8 *by its agents.*

9 8708. (a) Nothing in this article shall be construed to prevent
10 the department, the board, the executive officer, or a
11 levee-maintaining agency from taking any action to prevent an
12 imminent failure of a levee, ~~to operate a channel, floodway, stream~~
13 ~~bank, or flood control feature, or to take other emergency action~~
14 ~~necessary to protect the public welfare.~~

15 (b) ~~To the extent emergency action is required to abate an action,~~
16 ~~any aggrieved person that involves the removal, modification, or~~
17 ~~abatement of an encroachment, flood system improvement, or~~
18 ~~activity maintained by an individual, entity, or public agency, the~~
19 ~~individual, entity, or public agency may request a hearing before~~
20 ~~the board within 30 days after the action has been commenced.~~

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

26 8709. The board shall adopt emergency regulations necessary
27 to implement this article in accordance with Chapter 3.5
28 (commencing with Section 11340) of Part 1 of Division 3 of Title
29 2 of the Government Code. The adoption of emergency regulations
30 shall be deemed an emergency and necessary for the immediate
31 preservation of the public peace, health and safety, or general
32 welfare.

33 SEC. 4. Section 8732 of the Water Code is amended to read:

34 8732. The board may hold a hearing or partial hearing before
35 a committee of one or more members of the board, before a
36 qualified neutral hearing officer designated by the board president,
37 or before the executive officer or chief engineer of the board, at
38 any place within the state.

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