



**Water Commission Briefing for
Department of Water Resources
Proposed Encroachment Permit
Regulations**

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**Encroachment Permit
Regulations Overview
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Senate Bill 543

SB 543, Margett. State Water Project.

Under existing law, the Department of Water Resources operates the State Water Resources Development System (State Water Project). This bill would establish a permit program, administered by the department, for encroachments on State Water Project rights-of-way. The bill, with certain exceptions, would make any person who makes an alteration, improvement, encroachment, or excavation within the right-of-way acquired for the State Water Project, without a permit, guilty of a misdemeanor. The bill would provide for civil penalties, and, with certain exceptions, would also make it unlawful for any person to drain water, or permit water to be drained from the person's lands onto the State Water Project right-of-way, or to obstruct any natural watercourse or store or distribute water in a described manner. The bill would allow persons to continue certain authorized encroachments.

Introduced February 18, 2005

Chaptered September 22, 2005

California Code Enactment

- The effect of adoption of SB 543 was the enactment of Sections 12899.1 through 12899.11 of the California Water Code.
- These Sections authorize the Department to establish, administer, maintain and enforce a formal permit program for encroachments on the State Water Resources Development Project right-of-way; to control and regulate existing encroachments, to prevent, remove and abate unauthorized encroachments, activities or use of the Department's right-of-way, and to protect its integrity from damage or injury, while respecting the rights of others.

Regulations for DWR Encroachment Permits

12899.9. The department may adopt regulations to implement this chapter, including regulations that provide for the filing of an application for a permit, related administrative review and inspection, the imposition of permit fees and permit terms and conditions, an administrative appeal process, and a process for administrative review and regulation of existing encroachments in accordance with this chapter.

Timeline for Drafting Regulations



Office of Administrative Law Process

DWR Encroachment Permit Rulemaking Process After Submittal To OAL

	MONTH 1	MONTH 2	MONTH 3	MONTH 4	MONTH 5	MONTH 6	MONTH 7	MONTH 8	MONTH 9	MONTH 10	MONTH 11	MONTH 12	
<p>New Regulations Process After Rule making Record Has Opened</p> <p><i>(regulations must be adopted within 1 yr after rulemaking record is opened)</i></p>	<p>If acceptable, OAL opens rule-making record and issues 45-day (minimum) public notice</p>	<p>DWR begins public hearing(s) regarding new regulations, reviews public comment and considers responses to comments. If major changes to regulation language is proposed after public comment, OAL will re-notice. For other substantial changes, 15-day notice of proposed changes</p>											
							<p>DWR prepares Final Statement of Reasons & prepares rulemaking history including summary of comments and DWR responses to the comments or reasons for rejection of comments</p>						
									<p>Water Commission adopts the regulations</p>				
											<p>OAL closes rule-making record</p>		

Legal Discussion

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Findings (SB 543 – 2005)

The Legislature finds and declares:

- “(a) The State Water Resources Development System serves a critical public infrastructure function by providing water to California’s residents, businesses, farms, environment, and other uses.
- (b) It is vital for the Department of Water Resources to be able to protect this infrastructure from encroachments that may threaten the integrity, or interfere with the operation and maintenance, of this system.”
- The Statute grants authority to DWR to control encroachments while respecting the property rights of others. It authorizes DWR to remove encroachments that threaten or interfere with the integrity, operation or maintenance of the State Water Project System (SWP).

Definitions

“Encroachment” means:

- any installation of any tower, pole, pipe, fence, building, structure, object, improvement of any kind or character placed in, on, under, or over any portion of the Department’s right-of-way.
- alteration of the ground surface elevation by more than one foot, planting of trees, vines, or other vegetation in a way that may pose a threat to the physical integrity of any facility of the SWP or that could interfere with DWR’s rights with regard to access, inspection, repair, or the operation and maintenance of any SWP facility.

Exceptions to Obtaining a Permit

- Agreement between DWR and landowner/predecessor-in-interest
- Pre-existing real property interest over DWR right-of-way – includes public entities
- Person holding a permit/agreement with DWR as of January 1, 2007
- Jointly-owned systems by State of California and the U.S. government
- No permit required, but landowner must submit plans to DWR for review and comment

Water Code Section 12899.6:

UNLAWFUL ACTS

Unless allowed, authorized by permit or agreement, no person may:

- Drain water or permit water to be drained onto SWP right-of-way which results in damage to SWP; or
- Obstruct any natural watercourse in a way that:
 - Prevents, impedes, or restricts the natural flow of waters from any portion of DWR's right-of-way or SWP cross drainage structures unless other adequate and proper drainage is provided;
 - Causes waters to be stored or distributed in a way that causes damage to the SWP property; or
 - Causes interference with operation, maintenance, and rehabilitation of SWP makes them more hazardous

Water Code Section 12899.1(f)

Misdemeanor for Violations

- PENALTY: Any person who violates this section is guilty of a MISDEMEANOR.
- PENALTY: The violator must pay all costs to remove the encroachment, including any attorney's fees, court costs, should legal action be necessary
- PLUS: \$1,000 per day as long as the violation continues

Water Code Section 12899.7: NO COST TO THE DEPARTMENT OR STATE

- Any person who willfully or negligently "injures or damages any feature" of the SWP right-of-way is liable for the cost of necessary repairs, plus attorney's fees incurred by the department should legal action become necessary.
- Department prefers to work with the property owner, developer or other public agencies, but is not obligated to expend resources for resolution.