

Executive Summary:
Proposed Regulations on State Water Project Encroachments
Pursuant to Water Code 12899

History

Although the Department of Water Resources (DWR) has been managing encroachments over the State Water Project (SWP) since the Project's inception, legislation and subsequent regulations have not been adopted that specifically authorize DWR to permit certain encroachments and remove those that are unauthorized.

- Until 2005, DWR relied on its general authority to operate the SWP under Water Code Section 11451 to allow encroachments.
- In 2005, DWR sponsored legislation (SB 543, Margett) that was signed by the Governor and codified at Water Code 12899. The new law provided for the establishment of a comprehensive encroachment control program.
- These regulations would establish the specifics of that program, detailing the way individuals may use the SWP right of way for activities that are not inconsistent with the ongoing operation and maintenance of the SWP.

Current Status

DWR staff prepared the attached package which includes:

- Proposed Regulations for authorized encroachments and the abatement (removal) of unauthorized encroachments.
- An Initial Statement of Reasons.
- Language of Water Code Sections 12899 through 12899.11.

Next Steps

- Recommendation by DWR Director.
- Presentation to the California Water Commission for approval.
- Transmitted to the Office of Administrative Law for review, public hearing and adoption.

Plans for future Encroachment Permitting Program

- Staff in Operations and Maintenance have performed inspections over all SWP right-of-way where underground pipeline exists. Focus was placed on right-of-way where the SWP pipeline exists due to the aging of the pipeline system and the potential for catastrophic damage should there be a failure of the pipeline.
 - Where unauthorized encroachments have been found and determined to be a threat to the integrity of the SWP pipeline, DWR contacted the owners of the encroachment and in most cases, the unauthorized encroachment was removed without incident.
- Once regulations are adopted, DWR will begin the process of removing unauthorized encroachments that are detrimental to the SWP throughout the entirety of its right-of-way. If the encroachment is not removed after DWR has notified the owner as required by the statute, DWR will work with the Attorney General's office in exercising its rights and remedies under the statute.
 - The most significant unauthorized encroachments found during inspections were trees that

- have either been planted without DWR's consent, or found to be volunteer in nature.
 - Initial focus will be to develop a plan for tree removal throughout the SWP right of way.
- Encroachments that are unauthorized, but not a threat to the SWP, will be reviewed for potential permitting and allowed to remain only if they meet DWR standards for encroachments as defined by these regulations.

Anticipated Costs

The new law provides that those responsible for unauthorized encroachments are also responsible for the cost of removal.

- If upon notification to the responsible party the unauthorized encroachment is not removed, DWR may recover up to \$1,000/day including legal costs from the responsible party .
- Recovery of these costs could require legal action be taken against the offender(s) which will be handled by the Attorney General's Office.
- Most elements of the Encroachment Permit Program and Unauthorized Encroachment Program are currently part of DWR's ongoing management of its right of way. Informing DWR employees will be critical for successful maintenance of DWR right of way free from unauthorized encroachments, and could minimize the need for adding any positions to implement these regulations.
- O&M and Real Estate Branch will work cooperatively to create an outreach program that will educate all DWR employees who have duties that place them on DWR right-of-way, so they may be knowledgeable on what actions to take if they suspect an unauthorized encroachment. Cost associated with this will be included in DWR training budget.

Anticipated Public Concerns

DWR staff conducted three separate public meetings during the spring and summer of 2012 at various locations along the SWP right of way, including Fairfield, San Jose and San Luis Obispo. There was very little public commentary even after DWR specifically notified landowners with documented encroachments about the meetings. It is suggested from the nominal attendance and minimal comments at those meetings, that these regulations are non-controversial and will not create any public concern.