

**STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES
DIVISION OF FLOOD MANAGEMENT
3310 EL CAMINO AVENUE
SACRAMENTO, CA 95821**

October 6, 2008

NOTICE OF MODIFICATIONS TO TEXT OF PROPOSED REGULATIONS

Pursuant to the requirements of Government Code section 11346.8(c) and section 44 of title 1 of the California Code of Regulations, the Department of Water Resources (Department) is providing notice of changes made to the proposed regulation text for sections 571, 572, 573, 574, 575, 576, and 577. Sections 570, 571, 572, 573, 574, 575, 576, and 577 were the subject of regulatory hearings on June 24 and July 29, 2008. The changes are sufficiently related to the proposed regulations.

The changes are in response to comments received regarding the proposed regulations. The substantial changes are as follows:

Chapter 3.5 – Formerly proposed new chapter 3.5 in the California Code of Regulations (CCR) is changed to proposed new chapter 4.5 to avoid confusion. Currently, Chapter 3 ends with section 509 and chapter 4 starts with section 510. Chapter 4 ends with section 517 and chapter 5 begins with section 595. Therefore, it is numerically more appropriate to insert the proposed sections between chapters 4 and 5.

Section 571 – This section now includes additional defined terms: “Draft Nonfederal Cost-Sharing Report,” “Final Nonfederal Cost-Sharing Report,” “open space,” and “Report to the Legislature.” Also, clarifications for the meanings of “Department or Board,” “Board,” “impoverished area,” “poverty level,” and “state transportation facility” have been made.

Section 572 – This section was changed to include the process for determining the state cost share formerly contained in section 576. This change describes the complete determination process in one section, adding the Draft and Final Non Federal Cost-Sharing Reports, Report to the Legislature, and state cost share. Also, clarification is provided as to whom the Sponsor notifies when it intends to participate in a federal feasibility study that would result in a request for state cost sharing for a flood damage reduction project. In addition, the time period has been eliminated for the Department or Board to provide a written preliminary determination of eligibility for state participation. The section title was changed for clarity.

Section 573 – This section was changed to clarify that the Sponsor may elect to use an alternative method that has been “used or reviewed” (instead of “certified

as equitable”) by the Department of Finance for the Impoverished Area objective. In addition, clarification is made that the estimated annual benefit and cost of the project allocable to flood management shall be included in the Draft Nonfederal Cost-Sharing Report, whether the project increases or does not increase the level of flood protection for state facilities.

Section 574 – In this section, clarification is made that double-counting is not permitted among the Open Space, Habitat, and Recreation objectives; that is, nonfederal capital costs spent for meeting one of the three objectives cannot be applied towards the other two objectives. Further clarifications have been made for the significant contribution thresholds for the Impoverished Area and State Facilities objectives. Additionally, the increase in flood protection for both the Impoverished Area and State Facilities objectives may be determined from the federal feasibility study report or from supplemental information deemed appropriate by the Department or Board. Also, to be consistent with the change in section 573, clarification is made that the Sponsor may elect to use an alternative method that has been “used or reviewed” (instead of “certified as equitable”) by the Department of Finance for the Impoverished Area objective. Finally, to be consistent with the added definition of “open space” in section 571, the Open Space objective has been revised.

Section 575 – This section was changed for consistency with Water Code section 12585.7(d): A significant contribution to any of the five objectives may increase the state cost share by up to an additional twenty percent. Also, the prepositional phrase starting with “notwithstanding any other provisions” is changed to prevent potential inconsistency with the Water Code.

Section 576 – This section was changed for clarity. The contents of former section 576 (titled, “Report to the Legislature”) were moved to section 572. Thus, former section 577, “Finality of Authorized Cost-Share; Adjustment,” is re-numbered as section 576. Clarification is made in this section (formerly section 577) that the addendum to the Legislature must include all the items required in section 573(b), not section 576.

Section 577 – This section was moved to and re-numbered as section 576.

This “Notice of Modifications to Text of Proposed Regulations” and the “Modifications to Text of Proposed Regulations” may also be viewed and downloaded from the Department’s website at <http://www.water.ca.gov/floodmgmt/fpo/sgb/fcs/>

If you have any comments regarding the proposed changes, the Department will accept written comments beginning October 6, 2008. All written comments must be submitted to the Department before October 22, 2008 and be addressed to:

Michele Ng
Department of Water Resources

Division of Flood Management
3310 El Camino Avenue
Sacramento, CA 95821

Comments may also be submitted by facsimile (fax) at (916) 574-0331 or by email to ngm@water.ca.gov.

All written comments received before October 22, 2008, which pertain to the indicated changes will be reviewed and responded to by the Department as part of the compilation of the rulemaking file. Please limit your comments to the modifications to the text.