

TITLE 23. DEPARTMENT OF WATER RESOURCES

DIVISION 2, CHAPTER 4.5, SECTIONS 570-576 OF THE CALIFORNIA CODE OF REGULATIONS REGARDING FINANCIAL ASSISTANCE FOR FLOOD MANAGEMENT PROJECTS AND SMALL FLOOD MANAGEMENT PROJECTS

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Department of Water Resources (DWR) is proposing to take the action described in the Informative Digest.

Public hearings regarding this proposal will be held on November 30, 2011, at 5796 Corporate Avenue, Cypress, CA, large Conference Room, top floor, from 9:30am-11:30am, and on December 1, 2011, at 1416 Ninth Street, Sacramento, CA, Resources Building Auditorium, from 9am-11am. Any interested person or his or her authorized representative may present statements or arguments orally or in writing relevant to the action.

Notice is also given that written comments relevant to the proposed regulatory action may be hand-delivered or mailed to:

**STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES
DIVISION OF FLOOD MANAGEMENT
3310 EL CAMINO AVE
SACRAMENTO, CA 95814
ATTENTION: DAVID WRIGHT**

Comments may also be submitted by facsimile (fax) at (916)574-1478 or by email to dwright@water.ca.gov. In order to be considered before the DWR adopts the proposed regulations, written comments that present statements, arguments, or contentions relative to the proposed action must be received by December 2, 2011.

Following the public comment period, which closes December 2, 2011, DWR may adopt the proposed regulations if they remain substantially unchanged as described in the informative digest. DWR may make changes in the proposed regulations before adopting them. The text of any modified regulations will be made available to the public with the changes clearly marked at least 15 days before the regulations are adopted. If a modified text is required, a request for copy should be made to the agency official designated in this notice. DWR will accept comments on the modified regulations for 15 days after the date on which the revised text is made available.

AUTHORITY AND REFERENCE

DWR is proposing to adopt regulations pursuant to the authority given under Water Code Section 12601. The Department is implementing, interpreting, and making specific Water Code Section

12582.7, 12585.7, and 12585.9. The proposed updates to the regulations will supplement criteria and process for determining the percentage of State financial assistance in flood management projects, as well as update terms and definitions pertaining to cost-sharing. These regulations will update sections 570, 571, 574, and 575, to Title 23 of the California Code of Regulations.

INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW

In September 2010, the Legislature passed and the Governor signed Assembly Bill 1788, a bill that requires DWR to update existing regulations for determining the level of State financial assistance in flood management projects in order to allow for an increase cost-share with local agencies in economically disadvantaged areas. The updates enhance the existing regulations by providing more clarity to the existing criteria and processes to determine a flood control project's level of contribution to all or any of five objectives. The updates will also specifically enhance the disadvantaged area objective, which is one of the five objectives listed in Water Code Section 12585.7. Projects which are deemed by DWR to provide a significant contribution to any of the stated objectives may receive an increase in State share of the costs. Specifically, those communities that fit into the category of a disadvantaged area may receive an even larger State share of costs, dependent on the level to which they meet the disadvantaged area criteria. The updated text will provide further detail on the criteria for meeting the disadvantaged area objective.

Part 6 of the Water Code gives DWR general authority to provide financial assistance to flood control projects. Water Code Section 12582.7 makes federal participation a prerequisite to State financial assistance, and Water Code Section 12585.7 establishes State financial assistance at a base amount of 50 percent with potential increases up to 70 percent of nonfederal capital costs related to flood control and other purposes. Increases above the 50 percent base State cost-share are measured by a project's ability to significantly contribute to one or more of five objectives: protection, creation, enhancement, or opportunity for enhancement of endangered species, riparian, aquatic, terrestrial, or other important habitats; development of enhancement of designated recreational opportunities, provided the project is sufficiently accessible to the public; increased flood protection for areas with median household income below 120 percent of poverty level (disadvantaged area); or increased flood protection for State transportation of water supply facilities. Water Code Section 12585.7 was amended on September 30, 2010 to modify existing law to allow for an increased State cost-share pertaining to the disadvantaged area objective. The updated regulations will further clarify and make specific the criteria for determining a project's level of contribution to the objectives. The updates will include additions and amendments to the terms and definitions section as well as further description of project eligibility, method to determine a project's contribution to objectives, and the method to determine the recommended percentage increase in State share.

OTHER MATTERS PRESCRIBED BY STATUTE SPECIFICALLY FOR THIS AGENCY: FEDERAL CONFORMITY

The proposed regulation changes deal exclusively with relationships between State government and local government. There is no known existing or comparable federal regulation or statute. DWR finds that these regulations have no conflict with federal regulations.

LOCAL MANDATE

This proposal does not impose a mandate on local agencies or school districts. The cost-sharing program described allows for voluntary participation only.

FISCAL IMPACT ESTIMATES AND COSTS TO PUBLIC AGENCIES, BUSINESSES, AND PERSONS AFFECTED

The regulations do not have an effect on the actual cost of any project. The proposed updates affect only the allocation of the costs between local and State government. Therefore, they do not impact any private contractor's funding or availability to work on such projects and there are no imposed direct costs or benefits to businesses or employees. The DWR is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The DWR has determined that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states. These updates will not create or eliminate jobs, create or eliminate business, or affect the expansion of businesses. No reporting requirements on businesses or individuals or prescriptive standards are being imposed. The updates will impact costs to participating local governments. Local agencies can choose to participate in the program. Those that do will receive cost savings depending on the projects contribution to objectives stated in the statute. The proposed updates will not result in either a savings or costs to local agencies that choose not to participate in the programs. There will be an impact on State costs. The State share of costs and the appropriation of funds for any project that receives State financial assistance are authorized by legislature. The total fiscal impact of the cost-sharing programs is unknown. It is dependent on the number of local agencies that choose to participate, the State's economy, and the decisions made by the Legislature on appropriating funds.

ALTERNATIVES

The DWR must determine that no reasonable alternative considered by it or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action. DWR invites interested persons to present statements or arguments with respect to alternatives to the proposed action at the previously mentioned hearings or during written comment periods.

DISCLOSURES REGARDING THE PROPOSED ACTION

The DWR has made the following initial determinations:

Costs or savings to State Agencies: None.

Costs or savings in Federal Funding to the State: None.

Nondiscretionary costs or savings to Local Agencies: None.

Cost to any Local Agency or School District for Which Government code Sections 17500-17630 Require Reimbursement: None

Significant effect on housing costs: None.

Small Business Determination

The purpose of the proposed regulation updates is to modify criteria for determining the level of State financial assistance in flood management projects for economically disadvantaged areas. The regulations do not have an effect on the actual cost of any project. The proposed updates affect only the allocation of the costs between local and State government. Therefore, they do not impact any private contractor's funding or availability to work on such projects and there are no imposed direct costs or benefits to businesses or employees. The updates do not impose any cost impacts that an individual or small business would necessarily incur in a reasonable compliance with the proposed action. These updates will not create or eliminate jobs, create or eliminate business, or affect the expansion of businesses. The updates do not impose reporting requirements on businesses or individuals, or impose prescriptive standards. Therefore DWR has determined that the proposed regulations do not affect small business.

STATEMENT OF REASONS

DWR has prepared an initial statement of reasons for the proposed regulations and has available to the public all information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, the statement of reasons, and the information, upon which the proposal is based, may be obtained from the identified Agency Representative:

David Wright
Department of Water Resources
Division of Flood Management
3464 El Camino Ave
Sacramento, CA 95821
Telephone: (916) 574-1191
Fax: (916) 574-1478
dwright@water.ca.gov

The backup contact person for these inquiries is:

Raminder Bola
Department of Water Resources
Division of Flood Management
3464 El Camino Ave
Sacramento, CA 95821
Telephone: (916) 574-1421
Fax: (916) 574-1478
rbola@water.ca.gov

If the text of the proposed regulations is substantially changed following the public hearing and comment period, the full updated text will be available to the public for a 15 day comment period before the regulations are adopted. A final statement of reasons will be prepared when all comments have been received and considered, prior to the closing of the rulemaking record. You may obtain a copy of any or all information contained in the rulemaking record by making a written request to the Agency Representative. The rulemaking file is available for public inspection at all times, and can be accessed by contacting the Agency Representative.

WEB ACCESS

Materials regarding this proposal can be found at www.water.ca.gov/floodmgmt/fpo/sgb/lap/.