



● **Board of Directors**
Communications and Legislation Committee

6/13/2017 Board Meeting

8-10

Subject

Adopt CEQA determination and express support for the Brown Administration's budget trailer bill regarding supervision of dam safety and express support, if amended, for AB 1270 (Gallagher, R-Yuba City) regarding inspection of dams and reservoirs

Executive Summary

Budget Trailer Bill (RN 17-14056, dated May 4, 2017) amends various sections in California law to enhance supervision of dam safety and emergency response by creating new authorities to:

1. Require the Department of Water Resources (DWR) to reclassify the public safety risk of all jurisdictional dams;
2. Require dam owners to prepare inundation maps and emergency action plans for various failure scenarios;
3. Require DWR to adopt a fee schedule to recover its reasonable regulatory costs; and
4. Authorize DWR to impose a civil penalty of up to \$1,000 per day for dam owners who fail to comply with any requirement.

AB 1270 by Assembly Member James Gallagher (R-Yuba City) requires:

1. DWR to perform annual visual and physical inspections of dams; and
2. DWR to submit annual updates to the Legislature on five-year infrastructure improvement, maintenance and funding plans for all state-operated and maintained dams and reservoirs.

Details

Significant damage occurred to Lake Oroville's main spillway on February 7, 2017. Major erosion subsequently threatened to undercut the emergency spillway, and led to the rapid evacuation of 188,000 downstream residents. DWR immediately began repairs and design of a long-term fix for the Oroville spillways. On April 17, 2017, Kiewit Infrastructure West was awarded a \$275 million contract for the first phase of repairs to ensure that the spillways would be functional for the next rainy season beginning in November 2017. These events also initiated a review of regulations and authorities governing California's dam safety and emergency response programs.

As required by California law, DWR first established a Board of Consultants to review and comment on planned spillway repairs. Further, the Federal Energy Regulatory Commission (FERC) required DWR to initiate an independent forensic analysis aimed at determining the root cause of the failure. Both of these efforts are ongoing, with the final forensic analysis report expected this fall.

According to a 2016 performance report prepared by the Association of State Dam Safety Officials (ASDSO), California's dam safety program compares favorably to other states. For example, the state budgets 13 times more staff and 15 times more spending per regulated dam than the national average. However, California's dam safety program falls short of a model program developed jointly by ASDSO and the Federal Emergency

Management Agency. Compared to the model program, California lacks the authority to require emergency action plans and lacks some permitting authorities.

In light of the Oroville incident, the Brown Administration and Assembly Member James Gallagher (R-Yuba City) separately proposed various enhancements to California's existing dam safety program. The Brown Administration's dam safety trailer bill ([Attachment 1](#)) focuses on bridging the gaps between the model state safety program and existing law. AB 1270 (Gallagher) ([Attachment 2](#)) focuses primarily on requiring annual visual and physical inspections.

Existing Law

Various provisions in California law govern dam safety, inundation mapping, and emergency planning. Government Code Section 8589.5 requires the one-time submittal of inundation maps to the Office of Emergency Services (OES). These inundation maps are based largely on a single-failure scenario (the total collapse of a dam when the reservoir is full on a sunny day). OES then provides the inundation maps to public safety agencies so they can prepare emergency procedures.

Existing law also encourages, but does not require, public safety agencies to periodically update their emergency response procedures. Further, DWR recommends—but cannot require—dam owners to either prepare emergency action plans or to regularly update inundation maps. Dams under FERC jurisdiction (as opposed to state jurisdiction) must prepare and regularly update inundation maps and emergency action plans. FERC jurisdiction typically applies when a dam produces hydroelectric power and is located on a navigable water of the United States.

DWR's Division of Safety of Dams (DSOD) oversees California's jurisdictional dams during their design, construction, and operation. DSOD's goal is to inspect all jurisdictional dams at least once per year. However, its current inspection frequency ranges up to every 14 months. California law does not specify the inspection frequency; instead, it requires inspections "from time to time."

Effect on Metropolitan

Metropolitan maintains an active program to manage all of its dams and reservoirs, 24 of which are regulated by DSOD. Metropolitan's dam safety program includes operational monitoring, regular detailed inspections, periodic comprehensive facility assessments, and the preparation of inundation maps and emergency response plans.

The Brown Administration's Budget Trailer Bill and AB 1270 strengthen DSOD's regulatory powers and oversight. More frequent inspections by DWR and the proposed inclusion of critical appurtenant structures may help identify additional infrastructure upgrades at dams across the state. Further, completion of regular inundation maps and emergency action plans will improve emergency planning for neighboring communities. Staff believes the additional DSOD inspections and emergency planning are prudent given the new insights and findings which are now being discovered from the Oroville investigations.

Budget Trailer Bill RN 17-14056

The Brown Administration's budget trailer bill requires DWR to reclassify all state-jurisdictional dams based on their current potential threat to public safety, including the threat posed by the failure of either a dam or a "critical appurtenant structure" such as a spillway. The budget trailer bill also shifts emergency planning firmly onto dam owners (and away from public safety agencies) while providing oversight and approval authority to DWR and OES. The budget trailer bill would require inundation maps and emergency action plans to be updated on a ten-year cycle (or earlier if land-use patterns change). Finally, the bill requires DWR to establish a fee schedule to recover its reasonable regulatory costs, and authorizes DWR to impose a civil penalty of up to \$1,000 per day for non-compliance.

As such, the budget trailer bill will require that inundation maps and emergency action plans be updated regularly for Metropolitan's 24 state-jurisdictional dams. Metropolitan's jurisdictional dams range in size from the 2.1-mile-long East Dam at the 810,000-acre-foot Diamond Valley Lake to a 0.2-mile-long, 18-acre-foot water treatment basin at the Robert B. Diemer Water Treatment Plant. Metropolitan already updates inundation maps

for its dams on a regular cycle, and initiated the preparation of emergency action plans for each dam in 2015 on a voluntary basis. These emergency action plans will be complete by the end of 2017. Metropolitan's previous approach for emergency response plans at each dam relied upon site-specific communication protocol supplemented by Metropolitan's district-wide emergency response plan. Under the budget trailer bill, depending on the extent of new requirements for emergency action plans, Metropolitan may need to revise its plans. Similarly, if new failure scenarios are specified, Metropolitan will need to prepare additional inundation maps.

The Brown Administration has requested 16 additional positions (12 at DWR and four at OES) to conduct the new activities required in this trailer bill. For the DWR positions and activities, the regulatory fees imposed on dam owners will be increased. Staff projects that Metropolitan's fees for dam safety activities would increase from approximately \$300,000 per year today to approximately \$600,000 per year within three years.

AB 1270 (Gallagher)

AB 1270 would require DWR to conduct visual and physical inspections of all dams and reservoirs at least once per year rather than the current law which provides for inspections "from time-to-time." While it is DWR's intention to inspect all dams annually, additional DSOD staff will be required to ensure this frequency is achieved. The additional staffing costs for this workload are estimated at \$750,000 per year.

AB 1270 also requires DWR to submit a report annually to the Legislature that includes a five-year infrastructure improvement, maintenance and funding plan for state-operated and state-maintained dams and reservoirs (such as Lake Oroville). The staffing costs for this workload are estimated at \$150,000 per year.

Staff believes that AB 1270 reasonably changes the inspection frequency for high-hazard dams away from "time to time" to an annual basis. Staff also supports DWR's reporting of the status of state dams. In order to seek a balance between the benefit and the burden of AB 1270's provisions, staff recommends two amendments. First, in order to most effectively utilize DWR staff resources, the annual inspection requirement should be imposed only on high-hazard and significant-hazard dams, and the inspection frequency for low-hazard dams should be extended. Low-hazard dams are those where failure results in no probable loss of human life and low economic and/or environmental losses principally limited to the owner's property. Second, the reporting frequency of the infrastructure improvement, maintenance and funding plan should be extended to every two or three years because it is unlikely that infrastructure needs would vary widely from year to year.

Policy

Metropolitan Water District Administrative Code Section 9100: Objectives

"The District's policy with respect to management of risks of loss shall have as its objectives, to the extent physically and financially practicable:

- (a) The establishment and maintenance of a suitable work and service environment in which District personnel and the public can enjoy safety and security in the course of their daily pursuits.
- (b) The security and preservation of District assets and service capabilities from loss, destruction, or depletion."

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA because it involves continuing administrative activities, such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines). In addition, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is not defined as a project and is not subject to CEQA pursuant to Sections 15378(b)(2) and 15061(b)(3) of the State CEQA Guidelines.

CEQA determination for Option #2:

None required.

Board Options

Option #1

Adopt the CEQA determination that the proposed action is not defined as a project and is not subject to CEQA, and

Authorize the General Manager to express support for Budget Trailer Bill RN 17-14056 and express support, if amended, for AB 1270.

Fiscal Impact: Uncertain at this time. Metropolitan’s fees for DSOD inspections are expected to rise from approximately \$300,000 per year to approximately \$600,000 per year.

Business Analysis: Budget Trailer Bill RN 17-14056 and AB 1270 may improve local emergency planning and identification of potential risks posed by dams or critical appurtenant structures.

Option #2

Take no position on Budget Trailer Bill (RN17-14056) or AB 1270.

Fiscal Impact: None. Metropolitan’s current practices conform to the proposed requirements to prepare and regularly update emergency action plans and inundation maps.

Business Analysis: By adopting no position on Budget Trailer Bill (RN17-14056) or AB 1270, modifications to California’s dam safety program may not be realized.

Staff Recommendation

Option #1

	6/6/2017
Dee Zinke	Date
Assistant General Manager/Chief External Affairs Officer	

	6/8/2017
Jeffrey Kightlinger	Date
General Manager	

Attachment 1 – Budget Trailer Bill RN 17- 14056

Attachment 2 – Assembly Bill 1270 (Gallagher, R-Yuba City) as amended March 21, 2017

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An act to amend Section 1103 of the Civil Code, to amend Sections 8589.4 and 65302 of, and to repeal and add Section 8589.5 of, the Government Code, to amend Section 2692 of the Public Resources Code, and to amend Sections 6025.6, 6307, and 6428 of, to add Sections 6002.5, 6009, 6032, 6429, 6430, 6431, and 6432 to, and to add Article 6 (commencing with Section 6160) to Chapter 4 of Part 1 of Division 3 of, the Water Code, relating to dams.



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THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1103 of the Civil Code is amended to read:

1103. (a) Except as provided in Section 1103.1, this article applies to the transfer by sale, exchange, installment land sale contract, as defined in Section 2985, lease with an option to purchase, any other option to purchase, or ground lease coupled with improvements, of any real property described in subdivision (c), or residential stock cooperative, improved with or consisting of not less than one nor more than four dwelling units.

(b) Except as provided in Section 1103.1, this article shall apply to a resale transaction entered into on or after January 1, 2000, for a manufactured home, as defined in Section 18007 of the Health and Safety Code, that is classified as personal property intended for use as a residence, or a mobilehome, as defined in Section 18008 of the Health and Safety Code, that is classified as personal property intended for use as a residence, if the real property on which the manufactured home or mobilehome is located is real property described in subdivision (c).

(c) This article shall apply to the transactions described in subdivisions (a) and (b) only if the transferor or his or her agent is required by one or more of the following to disclose the property's location within a hazard zone:

(1) A person who is acting as an agent for a transferor of real property that is located within a special flood hazard area (any type Zone "A" or "V") designated by the Federal Emergency Management Agency, or the transferor if he or she is acting without an agent, shall disclose to any prospective transferee the fact that the property is located within a special flood hazard area if either:



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(A) The transferor, or the transferor’s agent, has actual knowledge that the property is within a special flood hazard area.

(B) The local jurisdiction has compiled a list, by parcel, of properties that are within the special flood hazard area and a notice has been posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the parcel list.

(2) A person who is acting as an agent for a transferor of real property that is located within an area of potential flooding ~~designated~~ shown on an inundation map prepared pursuant to Section 8589.5 of the Government Code 6161 of the Water Code, or the transferor if he or she is acting without an agent, shall disclose to any prospective transferee the fact that the property is located within an area of potential flooding if either:

(A) The transferor, or the transferor’s agent, has actual knowledge that the property is within an inundation area.

(B) The local jurisdiction has compiled a list, by parcel, of properties that are within the inundation area and a notice has been posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the parcel list.

(3) A transferor of real property that is located within a very high fire hazard severity zone, designated pursuant to Section 51178 of the Government Code, shall disclose to any prospective transferee the fact that the property is located within a very high fire hazard severity zone and is subject to the requirements of Section 51182 of the Government Code if either:



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(A) The transferor, or the transferor’s agent, has actual knowledge that the property is within a very high fire hazard severity zone.

(B) A map that includes the property has been provided to the local agency pursuant to Section 51178 of the Government Code and a notice has been posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the map and any information regarding changes to the map received by the local agency.

(4) A person who is acting as an agent for a transferor of real property that is located within an earthquake fault zone, designated pursuant to Section 2622 of the Public Resources Code, or the transferor if he or she is acting without an agent, shall disclose to any prospective transferee the fact that the property is located within a delineated earthquake fault zone if either:

(A) The transferor, or the transferor’s agent, has actual knowledge that the property is within a delineated earthquake fault zone.

(B) A map that includes the property has been provided to the city or county pursuant to Section 2622 of the Public Resources Code and a notice has been posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the map and any information regarding changes to the map received by the county.

(5) A person who is acting as an agent for a transferor of real property that is located within a seismic hazard zone, designated pursuant to Section 2696 of the Public Resources Code, or the transferor if he or she is acting without an agent, shall disclose



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to any prospective transferee the fact that the property is located within a seismic hazard zone if either:

(A) The transferor, or the transferor’s agent, has actual knowledge that the property is within a seismic hazard zone.

(B) A map that includes the property has been provided to the city or county pursuant to Section 2696 of the Public Resources Code and a notice has been posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the map and any information regarding changes to the map received by the county.

(6) A transferor of real property that is located within a state responsibility area determined by the board, pursuant to Section 4125 of the Public Resources Code, shall disclose to any prospective transferee the fact that the property is located within a wildland area that may contain substantial forest fire risks and hazards and is subject to the requirements of Section 4291 if either:

(A) The transferor, or the transferor’s agent, has actual knowledge that the property is within a wildland fire zone.

(B) A map that includes the property has been provided to the city or county pursuant to Section 4125 of the Public Resources Code and a notice has been posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the map and any information regarding changes to the map received by the county.

(d) Any waiver of the requirements of this article is void as against public policy.

SEC. 2. Section 8589.4 of the Government Code is amended to read:



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8589.4. (a) A person who is acting as an agent for a transferor of real property that is located within an area of potential flooding shown on an inundation map ~~designated pursuant to Section 8589.5, prepared pursuant to Section 6161 of the Water Code,~~ or the transferor if he or she is acting without an agent, shall disclose to any prospective transferee the fact that the property is located within an area of potential flooding.

(b) Disclosure is required pursuant to this section only when one of the following conditions is met:

(1) The transferor, or the transferor’s agent, has actual knowledge that the property is within an inundation area.

(2) The local jurisdiction has compiled a list, by parcel, of properties that are within the inundation area and a notice has been posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the parcel list.

(c) In all transactions that are subject to Section 1103 of the Civil Code, the disclosure required by subdivision (a) of this section shall be provided by either of the following means:

(1) The Local Option Real Estate Disclosure Statement as provided in Section 1102.6a of the Civil Code.

(2) The Natural Hazard Disclosure Statement as provided in Section 1103.2 of the Civil Code.

(d) For purposes of the disclosure required by this section, the following persons shall not be deemed agents of the transferor:



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(1) Persons specified in Section 1103.11 of the Civil Code.

(2) Persons acting under a power of sale regulated by Section 2924 of the Civil Code.

(e) Section 1103.13 of the Civil Code shall apply to this section.

(f) The specification of items for disclosure in this section does not limit or abridge any obligation for disclosure created by any other provision of law or that may exist in order to avoid fraud, misrepresentation, or deceit in the transfer transaction.

SEC. 3. Section 8589.5 of the Government Code is repealed.

~~8589.5. (a) Inundation maps showing the areas of potential flooding in the event of sudden or total failure of any dam, the partial or total failure of which the Office of Emergency Services determines, after consultation with the Department of Water Resources, would result in death or personal injury, shall be prepared and submitted as provided in this subdivision within six months after the effective date of this section; unless previously submitted or unless the time for submission of those maps is extended for reasonable cause by the Office of Emergency Services. The local governmental organization, utility, or other public or private owner of any dam so designated shall submit to the Office of Emergency Services one map that shall delineate potential flood zones that could result in the event of dam failure when the reservoir is at full capacity; or if the local governmental organization, utility, or other public or private owner of any dam shall determine it to be desirable, he or she shall submit three maps that shall delineate potential flood zones that could result in the event of dam failure when the reservoir is at full capacity, at median-storage level, and at normally low-storage level. After submission of copies of the map or maps, the Office of Emergency Services shall~~



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~~review the map or maps, and shall return any map or maps that do not meet the requirements of this subdivision, together with recommendations relative to conforming to the requirements. Maps rejected by the Office of Emergency Services shall be revised to conform to those recommendations and resubmitted. The Office of Emergency Services shall keep on file those maps that conform to the provisions of this subdivision. Maps approved pursuant to this subdivision shall also be kept on file with the Department of Water Resources. The owner of a dam shall submit final copies of those maps to the Office of Emergency Services that shall immediately submit identical copies to the appropriate public safety agency of any city, county, or city and county likely to be affected.~~

~~(b) (1) Based upon a review of inundation maps submitted pursuant to subdivision (a) or based upon information gained by an onsite inspection and consultation with the affected local jurisdiction when the requirement for an inundation map is waived pursuant to subdivision (d), the Office of Emergency Services shall designate areas within which death or personal injury would, in its determination, result from the partial or total failure of a dam. The appropriate public safety agencies of any city, county, or city and county, the territory of which includes any of those areas, may adopt emergency procedures for the evacuation and control of populated areas below those dams. The Office of Emergency Services shall review the procedures to determine whether adequate public safety measures exist for the evacuation and control of populated areas below the dams, and shall make recommendations with regard to the adequacy of those procedures to the concerned public safety agency. In conducting~~



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~~the review, the Office of Emergency Services shall consult with appropriate state and local agencies:~~

~~(2) Emergency procedures specified in this subdivision shall conform to local needs, and may be required to include any of the following elements or any other appropriate element, in the discretion of the Office of Emergency Services:~~

~~(A) Delineation of the area to be evacuated:~~

~~(B) Routes to be used:~~

~~(C) Traffic control measures:~~

~~(D) Shelters to be activated for the care of the evacuees:~~

~~(E) Methods for the movement of people without their own transportation:~~

~~(F) Identification of particular areas or facilities in the flood zones that will not require evacuation because of their location on high ground or similar circumstances:~~

~~(G) Identification and development of special procedures for the evacuation and care of people from unique institutions:~~

~~(H) Procedures for the perimeter and interior security of the area, including such things as passes, identification requirements, and antilooting patrols:~~

~~(I) Procedures for the lifting of the evacuation and reentry of the area:~~

~~(J) Details as to which organizations are responsible for the functions described in this paragraph and the material and personnel resources required:~~

~~(3) It is the intent of the Legislature to encourage each agency that prepares emergency procedures to establish a procedure for their review every two years:~~

~~(e) "Dam," as used in this section, has the same meaning as specified in Sections 6002, 6003, and 6004 of the Water Code:~~



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~~(d) Where both of the following conditions exist, the Office of Emergency Services may waive the requirement for an inundation map:~~

~~(1) Where the effects of potential inundation in terms of death or personal injury, as determined through onsite inspection by the Office of Emergency Services in consultation with the affected local jurisdictions, can be ascertained without an inundation map:~~

~~(2) Where adequate evacuation procedures can be developed without benefit of an inundation map:~~

~~(e) If development should occur in any exempted area after a waiver has been granted, the local jurisdiction shall notify the Office of Emergency Services of that development. All waivers shall be reevaluated every two years by the Office of Emergency Services:~~

~~(f) A notice may be posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the map, and of any information received by the county subsequent to the receipt of the map regarding changes to inundation areas within the county:~~

SEC. 4. Section 8589.5 is added to the Government Code, to read:

8589.5. (a) For the purposes of this section, "emergency action plan" means a written document that outlines actions to be undertaken during an emergency in order to minimize or eliminate the potential loss of life and property damage.

(b) An emergency action plan shall do all of the following:

(1) Be based upon an inundation map approved by the Department of Water Resources pursuant to Section 6161 of the Water Code.

Deleted b (1) from earlier version: Incorporate the minimum requirements established by the Office of Emergency Services.



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(2) Be developed by the dam’s owner in consultation with any local public safety agency that may be impacted by an incident involving the dam, to the extent a local public safety agency wishes to consult.

(3) Adhere to Federal Emergency Management Agency guidelines, and include, at a minimum, all of the following:

(A) Notification flowcharts and contact information.

(B) The response process.

(C) The roles and responsibilities of the dam owner and impacted jurisdictions following an incident involving the dam.

(D) Preparedness activities and exercise schedules.

(E) Inundation maps approved by the Department of Water Resources pursuant to Section 6161.

(F) Any additional information that may impact life or property.

(c) At least once annually, an owner of a dam shall conduct an emergency action plan notification exercise with local public safety agencies, to the extent that a local public safety agency wishes to participate.

(d) (1) The appropriate public safety agencies of any city, county, or city and county, the territory of which includes any of those areas identified in an inundation map and the emergency action plan, may adopt emergency procedures for the evacuation and control of the potentially affected areas. The Office of Emergency Services may provide guidance to these agencies on incorporating the emergency action plan into the local all-hazard emergency response plans and local hazard mitigation plans.



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(2) Local public safety agencies may adopt emergency procedures that incorporate the information contained in an emergency action plan in a manner that conforms to local needs, and that includes all of the following elements:

- (A) Methods and procedures for alerting and warning the public.
- (B) Delineation of the area to be evacuated.
- (C) Routes to be used.
- (D) Traffic control measures.
- (E) Shelters to be activated for the care of the evacuees.
- (F) Methods for the movement of people without their own transportation.

(G) Identification of particular areas or facilities in the flood zones that will not require evacuation because of their location on high ground or similar circumstances.

(H) Identification and development of procedures for the evacuation and care of people with access and functional needs and for the evacuation of specific facilities, such as schools, hospitals, skilled nursing facilities, and other facilities as deemed necessary.

(I) Procedures for the perimeter and interior security of the evacuated area.

(J) Procedures for the lifting of the evacuation and reentry of the area.

(K) Details as to which organizations are responsible for the functions described in this paragraph and the material and personnel resources required.

(3) Each agency that prepares emergency procedures may review and update these procedures in accordance with its established schedules.



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(e) Nothing in Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code shall be construed to require disclosure of an emergency action plan.

(f) The Office of Emergency Services may promulgate emergency regulations, as necessary, for the purpose of this section in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3). The adoption of these regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare.

SEC. 5. Section 65302 of the Government Code is amended to read:

65302. The general plan shall consist of a statement of development policies and shall include a diagram or diagrams and text setting forth objectives, principles, standards, and plan proposals. The plan shall include the following elements:

(a) A land use element that designates the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space, including agriculture, natural resources, recreation, and enjoyment of scenic beauty, education, public buildings and grounds, solid and liquid waste disposal facilities, greenways, as defined in Section 816.52 of the Civil Code, and other categories of public and private uses of land. The location and designation of the extent of the uses of the land for public and private uses shall consider the identification of land and natural resources pursuant to paragraph (3) of subdivision (d). The land use element shall include a statement of the standards of population density and building intensity recommended for the various districts and other territory covered by the plan.



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The land use element shall identify and annually review those areas covered by the plan that are subject to flooding identified by flood plain mapping prepared by the Federal Emergency Management Agency (FEMA) or the Department of Water Resources. The land use element shall also do both of the following:

(1) Designate in a land use category that provides for timber production those parcels of real property zoned for timberland production pursuant to the California Timberland Productivity Act of 1982 (Chapter 6.7 (commencing with Section 51100) of Part 1 of Division 1 of Title 5).

(2) Consider the impact of new growth on military readiness activities carried out on military bases, installations, and operating and training areas, when proposing zoning ordinances or designating land uses covered by the general plan for land, or other territory adjacent to military facilities, or underlying designated military aviation routes and airspace.

(A) In determining the impact of new growth on military readiness activities, information provided by military facilities shall be considered. Cities and counties shall address military impacts based on information from the military and other sources.

(B) The following definitions govern this paragraph:

(i) "Military readiness activities" mean all of the following:

(I) Training, support, and operations that prepare the men and women of the military for combat.

(II) Operation, maintenance, and security of any military installation.

(III) Testing of military equipment, vehicles, weapons, and sensors for proper operation or suitability for combat use.



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(ii) "Military installation" means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the United States Department of Defense as defined in paragraph (1) of subsection (g) of Section 2687 of Title 10 of the United States Code.

(b) (1) A circulation element consisting of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, any military airports and ports, and other local public utilities and facilities, all correlated with the land use element of the plan.

(2) (A) Commencing January 1, 2011, upon any substantive revision of the circulation element, the legislative body shall modify the circulation element to plan for a balanced, multimodal transportation network that meets the needs of all users of streets, roads, and highways for safe and convenient travel in a manner that is suitable to the rural, suburban, or urban context of the general plan.

(B) For purposes of this paragraph, "users of streets, roads, and highways" mean bicyclists, children, persons with disabilities, motorists, movers of commercial goods, pedestrians, users of public transportation, and seniors.

(c) A housing element as provided in Article 10.6 (commencing with Section 65580).

(d) (1) A conservation element for the conservation, development, and utilization of natural resources including water and its hydraulic force, forests, soils, rivers and other waters, harbors, fisheries, wildlife, minerals, and other natural resources. The conservation element shall consider the effect of development within the jurisdiction, as described in the land use element, on natural resources located on public lands,



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including military installations. That portion of the conservation element including waters shall be developed in coordination with any countywide water agency and with all district and city agencies, including flood management, water conservation, or groundwater agencies that have developed, served, controlled, managed, or conserved water of any type for any purpose in the county or city for which the plan is prepared. Coordination shall include the discussion and evaluation of any water supply and demand information described in Section 65352.5, if that information has been submitted by the water agency to the city or county.

(2) The conservation element may also cover all of the following:

(A) The reclamation of land and waters.

(B) Prevention and control of the pollution of streams and other waters.

(C) Regulation of the use of land in stream channels and other areas required for the accomplishment of the conservation plan.

(D) Prevention, control, and correction of the erosion of soils, beaches, and shores.

(E) Protection of watersheds.

(F) The location, quantity, and quality of the rock, sand, and gravel resources.

(3) Upon the next revision of the housing element on or after January 1, 2009, the conservation element shall identify rivers, creeks, streams, flood corridors, riparian habitats, and land that may accommodate floodwater for purposes of groundwater recharge and stormwater management.

(e) An open-space element as provided in Article 10.5 (commencing with Section 65560).



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(f) (1) A noise element that shall identify and appraise noise problems in the community. The noise element shall analyze and quantify, to the extent practicable, as determined by the legislative body, current and projected noise levels for all of the following sources:

(A) Highways and freeways.

(B) Primary arterials and major local streets.

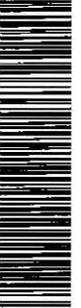
(C) Passenger and freight online railroad operations and ground rapid transit systems.

(D) Commercial, general aviation, heliport, helistop, and military airport operations, aircraft overflights, jet engine test stands, and all other ground facilities and maintenance functions related to airport operation.

(E) Local industrial plants, including, but not limited to, railroad classification yards.

(F) Other ground stationary noise sources, including, but not limited to, military installations, identified by local agencies as contributing to the community noise environment.

(2) Noise contours shall be shown for all of these sources and stated in terms of community noise equivalent level (CNEL) or day-night average sound level (L_{dn}). The noise contours shall be prepared on the basis of noise monitoring or following generally accepted noise modeling techniques for the various sources identified in paragraphs (1) to (6), inclusive.



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(3) The noise contours shall be used as a guide for establishing a pattern of land uses in the land use element that minimizes the exposure of community residents to excessive noise.

(4) The noise element shall include implementation measures and possible solutions that address existing and foreseeable noise problems, if any. The adopted noise element shall serve as a guideline for compliance with the state’s noise insulation standards.

(g) (1) A safety element for the protection of the community from any unreasonable risks associated with the effects of seismically induced surface rupture, ground shaking, ground failure, tsunami, seiche, and dam failure; slope instability leading to mudslides and landslides; subsidence; liquefaction; and other seismic hazards identified pursuant to Chapter 7.8 (commencing with Section 2690) of Division 2 of the Public Resources Code, and other geologic hazards known to the legislative body; flooding; and wildland and urban fires. The safety element shall include mapping of known seismic and other geologic hazards. It shall also address evacuation routes, military installations, peakload water supply requirements, and minimum road widths and clearances around structures, as those items relate to identified fire and geologic hazards.

(2) The safety element, upon the next revision of the housing element on or after January 1, 2009, shall also do the following:

(A) Identify information regarding flood hazards, including, but not limited to, the following:



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(i) Flood hazard zones. As used in this subdivision, “flood hazard zone” means an area subject to flooding that is delineated as either a special hazard area or an area of moderate or minimal hazard on an official flood insurance rate map issued by the Federal Emergency Management Agency (FEMA). The identification of a flood hazard zone does not imply that areas outside the flood hazard zones or uses permitted within flood hazard zones will be free from flooding or flood damage.

(ii) National Flood Insurance Program maps published by FEMA.

(iii) Information about flood hazards that is available from the United States Army Corps of Engineers.

(iv) Designated floodway maps that are available from the Central Valley Flood Protection Board.

(v) Dam failure inundation maps prepared pursuant to Section-8589.5 6161 of the Water Code that are available from the Office of Emergency Services, Department of Water Resources.

(vi) Awareness Floodplain Mapping Program maps and 200-year flood plain maps that are or may be available from, or accepted by, the Department of Water Resources.

(vii) Maps of levee protection zones.

(viii) Areas subject to inundation in the event of the failure of project or nonproject levees or floodwalls.

(ix) Historical data on flooding, including locally prepared maps of areas that are subject to flooding, areas that are vulnerable to flooding after wildfires, and sites that have been repeatedly damaged by flooding.



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(x) Existing and planned development in flood hazard zones, including structures, roads, utilities, and essential public facilities.

(xi) Local, state, and federal agencies with responsibility for flood protection, including special districts and local offices of emergency services.

(B) Establish a set of comprehensive goals, policies, and objectives based on the information identified pursuant to subparagraph (A), for the protection of the community from the unreasonable risks of flooding, including, but not limited to:

(i) Avoiding or minimizing the risks of flooding to new development.

(ii) Evaluating whether new development should be located in flood hazard zones, and identifying construction methods or other methods to minimize damage if new development is located in flood hazard zones.

(iii) Maintaining the structural and operational integrity of essential public facilities during flooding.

(iv) Locating, when feasible, new essential public facilities outside of flood hazard zones, including hospitals and health care facilities, emergency shelters, fire stations, emergency command centers, and emergency communications facilities or identifying construction methods or other methods to minimize damage if these facilities are located in flood hazard zones.

(v) Establishing cooperative working relationships among public agencies with responsibility for flood protection.

(C) Establish a set of feasible implementation measures designed to carry out the goals, policies, and objectives established pursuant to subparagraph (B).



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(3) Upon the next revision of the housing element on or after January 1, 2014, the safety element shall be reviewed and updated as necessary to address the risk of fire for land classified as state responsibility areas, as defined in Section 4102 of the Public Resources Code, and land classified as very high fire hazard severity zones, as defined in Section 51177. This review shall consider the advice included in the Office of Planning and Research's most recent publication of "Fire Hazard Planning, General Plan Technical Advice Series" and shall also include all of the following:

(A) Information regarding fire hazards, including, but not limited to, all of the following:

(i) Fire hazard severity zone maps available from the Department of Forestry and Fire Protection.

(ii) Any historical data on wildfires available from local agencies or a reference to where the data can be found.

(iii) Information about wildfire hazard areas that may be available from the United States Geological Survey.

(iv) General location and distribution of existing and planned uses of land in very high fire hazard severity zones and in state responsibility areas, including structures, roads, utilities, and essential public facilities. The location and distribution of planned uses of land shall not require defensible space compliance measures required by state law or local ordinance to occur on publicly owned lands or open space designations of homeowner associations.

(v) Local, state, and federal agencies with responsibility for fire protection, including special districts and local offices of emergency services.



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(B) A set of goals, policies, and objectives based on the information identified pursuant to subparagraph (A) for the protection of the community from the unreasonable risk of wildfire.

(C) A set of feasible implementation measures designed to carry out the goals, policies, and objectives based on the information identified pursuant to subparagraph (B) including, but not limited to, all of the following:

(i) Avoiding or minimizing the wildfire hazards associated with new uses of land.

(ii) Locating, when feasible, new essential public facilities outside of high fire risk areas, including, but not limited to, hospitals and health care facilities, emergency shelters, emergency command centers, and emergency communications facilities, or identifying construction methods or other methods to minimize damage if these facilities are located in a state responsibility area or very high fire hazard severity zone.

(iii) Designing adequate infrastructure if a new development is located in a state responsibility area or in a very high fire hazard severity zone, including safe access for emergency response vehicles, visible street signs, and water supplies for structural fire suppression.

(iv) Working cooperatively with public agencies with responsibility for fire protection.

(D) If a city or county has adopted a fire safety plan or document separate from the general plan, an attachment of, or reference to, a city or county's adopted fire safety plan or document that fulfills commensurate goals and objectives and contains information required pursuant to this paragraph.



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(4) Upon the next revision of a local hazard mitigation plan, adopted in accordance with the federal Disaster Mitigation Act of 2000 (Public Law 106-390), on or after January 1, 2017, or, if a local jurisdiction has not adopted a local hazard mitigation plan, beginning on or before January 1, 2022, the safety element shall be reviewed and updated as necessary to address climate adaptation and resiliency strategies applicable to the city or county. This review shall consider advice provided in the Office of Planning and Research's General Plan Guidelines and shall include all of the following:

(A) (i) A vulnerability assessment that identifies the risks that climate change poses to the local jurisdiction and the geographic areas at risk from climate change impacts, including, but not limited to, an assessment of how climate change may affect the risks addressed pursuant to paragraphs (2) and (3).

(ii) Information that may be available from federal, state, regional, and local agencies that will assist in developing the vulnerability assessment and the adaptation policies and strategies required pursuant to subparagraph (B), including, but not limited to, all of the following:

(I) Information from the Internet-based Cal-Adapt tool.

(II) Information from the most recent version of the California Adaptation Planning Guide.

(III) Information from local agencies on the types of assets, resources, and populations that will be sensitive to various climate change exposures.

(IV) Information from local agencies on their current ability to deal with the impacts of climate change.



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(V) Historical data on natural events and hazards, including locally prepared maps of areas subject to previous risk, areas that are vulnerable, and sites that have been repeatedly damaged.

(VI) Existing and planned development in identified at-risk areas, including structures, roads, utilities, and essential public facilities.

(VII) Federal, state, regional, and local agencies with responsibility for the protection of public health and safety and the environment, including special districts and local offices of emergency services.

(B) A set of adaptation and resilience goals, policies, and objectives based on the information specified in subparagraph (A) for the protection of the community.

(C) A set of feasible implementation measures designed to carry out the goals, policies, and objectives identified pursuant to subparagraph (B) including, but not limited to, all of the following:

(i) Feasible methods to avoid or minimize climate change impacts associated with new uses of land.

(ii) The location, when feasible, of new essential public facilities outside of at-risk areas, including, but not limited to, hospitals and health care facilities, emergency shelters, emergency command centers, and emergency communications facilities, or identifying construction methods or other methods to minimize damage if these facilities are located in at-risk areas.

(iii) The designation of adequate and feasible infrastructure located in an at-risk area.



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(iv) Guidelines for working cooperatively with relevant local, regional, state, and federal agencies.

(v) The identification of natural infrastructure that may be used in adaptation projects, where feasible. Where feasible, the plan shall use existing natural features and ecosystem processes, or the restoration of natural features and ecosystem processes, when developing alternatives for consideration. For the purposes of this clause, “natural infrastructure” means the preservation or restoration of ecological systems, or utilization of engineered systems that use ecological processes, to increase resiliency to climate change, manage other environmental hazards, or both. This may include, but is not limited to, floodplain and wetlands restoration or preservation, combining levees with restored natural systems to reduce flood risk, and urban tree planting to mitigate high heat days.

(D) (i) If a city or county has adopted the local hazard mitigation plan, or other climate adaptation plan or document that fulfills commensurate goals and objectives and contains the information required pursuant to this paragraph, separate from the general plan, an attachment of, or reference to, the local hazard mitigation plan or other climate adaptation plan or document.

(ii) Cities or counties that have an adopted hazard mitigation plan, or other climate adaptation plan or document that substantially complies with this section, or have substantially equivalent provisions to this subdivision in their general plans, may use that information in the safety element to comply with this subdivision, and shall summarize and incorporate by reference into the safety element the other general plan



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provisions, climate adaptation plan or document, specifically showing how each requirement of this subdivision has been met.

(5) After the initial revision of the safety element pursuant to paragraphs (2) and (3) upon each revision of the housing element, the planning agency shall review and, if necessary, revise the safety element to identify new information relating to flood and fire hazards that was not available during the previous revision of the safety element.

(6) Cities and counties that have flood plain management ordinances that have been approved by FEMA that substantially comply with this section, or have substantially equivalent provisions to this subdivision in their general plans, may use that information in the safety element to comply with this subdivision, and shall summarize and incorporate by reference into the safety element the other general plan provisions or the flood plain ordinance, specifically showing how each requirement of this subdivision has been met.

(7) Prior to the periodic review of its general plan and prior to preparing or revising its safety element, each city and county shall consult the California Geological Survey of the Department of Conservation, the Central Valley Flood Protection Board, if the city or county is located within the boundaries of the Sacramento and San Joaquin Drainage District, as set forth in Section 8501 of the Water Code, and the Office of Emergency Services for the purpose of including information known by and available to the department, the agency, and the board required by this subdivision.

(8) To the extent that a county's safety element is sufficiently detailed and contains appropriate policies and programs for adoption by a city, a city may adopt



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that portion of the county’s safety element that pertains to the city’s planning area in satisfaction of the requirement imposed by this subdivision.

(h) (1) An environmental justice element, or related goals, policies, and objectives integrated in other elements, that identifies disadvantaged communities within the area covered by the general plan of the city, county, or city and county, if the city, county, or city and county has a disadvantaged community. The environmental justice element, or related environmental justice goals, policies, and objectives integrated in other elements, shall do all of the following:

(A) Identify objectives and policies to reduce the unique or compounded health risks in disadvantaged communities by means that include, but are not limited to, the reduction of pollution exposure, including the improvement of air quality, and the promotion of public facilities, food access, safe and sanitary homes, and physical activity.

(B) Identify objectives and policies to promote civil engagement in the public decisionmaking process.

(C) Identify objectives and policies that prioritize improvements and programs that address the needs of disadvantaged communities.

(2) A city, county, or city and county subject to this subdivision shall adopt or review the environmental justice element, or the environmental justice goals, policies, and objectives in other elements, upon the adoption or next revision of two or more elements concurrently on or after January 1, 2018.



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(3) By adding this subdivision, the Legislature does not intend to require a city, county, or city and county to take any action prohibited by the United States Constitution or the California Constitution.

(4) For purposes of this subdivision, the following terms shall apply:

(A) "Disadvantaged communities" means an area identified by the California Environmental Protection Agency pursuant to Section 39711 of the Health and Safety Code or an area that is a low-income area that is disproportionately affected by environmental pollution and other hazards that can lead to negative health effects, exposure, or environmental degradation.

(B) "Public facilities" includes public improvements, public services, and community amenities, as defined in subdivision (d) of Section 66000.

(C) "Low-income area" means an area with household incomes at or below 80 percent of the statewide median income or with household incomes at or below the threshold designated as low income by the Department of Housing and Community Development's list of state income limits adopted pursuant to ~~Section 50093~~, 50093 of the Health and Safety Code.

SEC. 6. Section 2692 of the Public Resources Code is amended to read:

2692. (a) It is the intent of the Legislature to provide for a statewide seismic hazard mapping and technical advisory program to assist cities and counties in fulfilling their responsibilities for protecting the public health and safety from the effects of strong ground shaking, liquefaction, landslides, or other ground failure and other seismic hazards caused by earthquakes.



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(b) It is further the intent of the Legislature that maps and accompanying information provided pursuant to this chapter be made available to local governments for planning and development purposes.

(c) It is further the intent of the Legislature that the California Geological Survey, in implementing this chapter, shall, to the extent possible, coordinate its activities with, and use existing information generated from, the earthquake fault zones mapping program pursuant to Chapter 7.5 (commencing with Section 2621), and the inundation maps prepared pursuant to ~~Section 8589.5 of the Government Code~~. 6161 of the Water Code.

SEC. 7. Section 6002.5 is added to the Water Code, to read:

6002.5. "Critical appurtenant structure" means a water surface barrier or hydraulic control structure that is 25 feet or more in height, that impounds 5,000 acre-feet of water or more, or that the department determines poses a significant downstream hazard potential.

SEC. 8. Section 6009 is added to the Water Code, to read:

6009. "State jurisdictional dam" means a dam not wholly under the control of the federal government.

SEC. 9. Section 6025.6 of the Water Code is amended to read:

6025.6. (a) An owner of a structure defined as a dam pursuant to Section 6002, but excluded from that definition pursuant to subdivision (d) of Section 6004 or otherwise exempted from the requirements of this chapter pursuant to Section 6025.5, shall comply with the requirements of ~~Section 8589.5 of the Government Code~~ 6161



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and shall employ a civil engineer who is registered in the state to supervise the structure for the protection of life and property for the full operating life of the structure.

(b) (1) The civil engineer supervising a dam pursuant to subdivision (a) shall take into consideration, in determining whether or not a dam constitutes, or would constitute, a danger to life or property, the possibility that the dam might be endangered by seepage, earth movement, or other conditions that exist, or might occur, in any area in the vicinity of the dam.

(2) If the civil engineer determines that a dam under his or her supervision constitutes, or would constitute, a danger to life or property, the civil engineer shall notify the owner of the dam and recommend appropriate action.

(c) The owner shall submit to the department the name, business address, and telephone number of each supervising civil engineer.

(d) The department shall submit the information provided pursuant to subdivision (c) to the Office of Emergency Services on or before January 1, 1995, and on or before each January 1 thereafter. Any change in the information shall be submitted to the department on or before July 1 of each year.

SEC. 10. Section 6032 is added to the Water Code, to read:

6032. If a dam is owned by one or more persons or entities, the owners shall form or delegate legal and financial authority to a single entity that is responsible for the operation and maintenance of the dam, as well as the payment of any fees or other costs associated with dam ownership.



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SEC. 11. Article 6 (commencing with Section 6160) is added to Chapter 4 of Part 1 of Division 3 of the Water Code, to read:

Article 6. Inundation Maps and Emergency Planning

6160. (a) An owner of a dam that is regulated by the state is responsible for emergency preparedness with regard to the potential for loss of life and property resulting from the failure of a dam, as defined in Section 6002, or a critical appurtenant structure, as defined in Section 6002.5.

(b) (1) Not later than July 1, 2017, the department shall classify the public safety risk of all state jurisdictional dams, based on downstream hazard potential and reviews of critical appurtenant structures, in accordance with, at a minimum, guidelines set forth by the Federal Emergency Management Agency. The department shall notify the owner of a dam of the hazard classification of the owner's dam.

(2) The department may revise a dam's classification to reflect changes in downstream population, critical infrastructure, and land use. The department shall notify the affected dam owner of any changes in the hazard classification of the owner's dam.

(3) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the classification of the public safety risk by the department on or before July 1, 2017, pursuant to this section is not subject to review or approval by the Office of Administrative Law.



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(c) The owner of a dam that is regulated by the state, except a dam classified by the department pursuant to subdivision (b) as low hazard, shall prepare an emergency action plan pursuant to Section 8589.5 of the Government Code.

(d) An owner of a dam that is jointly regulated by the state and the Federal Energy Regulatory Commission shall prepare an emergency action plan in accordance with Federal Energy Regulatory Commission guidelines.

6161. (a) (1) An owner of a state jurisdictional dam, except an owner of a dam classified by the department pursuant to Section 6160 as a low hazard dam, shall submit electronically to the department an inundation map that shows the area that would be subject to flooding under various failure scenarios of the dam and other critical appurtenant structures.

(2) Before approval of an inundation map, the department shall review the map and may require the owner to make changes that the department deems necessary.

(3) Upon approval of the inundation map or maps by the department, the owner of the dam shall develop and submit to the department and the Office of Emergency Services based upon the approved inundation map or maps an emergency action plan that is based upon the approved inundation map or maps.

(4) If an owner of a dam has an existing emergency action plan as of March 1, 2017, the department shall review an inundation map contained in the plan. If the department determines the inundation map is sufficient, the department shall request the Office of Emergency Services to review the emergency action plan associated with that inundation map.



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(b) (1) The Office of Emergency Services shall review and approve an emergency action plan no later than 60 days after receipt of the plan from the dam owner pursuant to Section 8589.5 of the Government Code. To the extent possible, the Office of Emergency Services shall give priority to a dam with the highest hazard classification as determined by the department pursuant to Section 6160.

(2) If the Office of Emergency Services determines a proposed emergency action plan does not meet the requirements of Section 8589.5 of the Government Code, the Office of Emergency Services shall inform the owner of the dam and require the owner of the dam to amend and resubmit the emergency action plan for approval. The Office of Emergency Services shall review and, if the emergency action plan meets the requirements of Section 8589.5 of the Government Code, approve a resubmitted emergency action plan within 30 days of receipt from the owner of the dam.

(3) Upon approval by the Office of Emergency Services of an emergency action plan, the Office of Emergency Services shall notify the department and the owner of the dam of the approval. The owner of the dam shall ensure that the approved emergency action plan is disseminated to appropriate public safety and emergency management agencies in potentially affected jurisdictions, to the extent these agencies wish to receive approved emergency action plans.

(c) (1) The department shall make an approved inundation map publicly available.

(2) Nothing in Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code shall be construed to require disclosure of an emergency action plan.



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(d) (1) Pursuant to the classification by the department under Section 6160, an owner of a dam shall complete and submit an emergency action plan as follows:

(A) On or before January 1, 2018, if the hazard classification of the dam is extremely high.

(B) On or before January 1, 2019, if the hazard classification of the dam is high.

(C) On or before January 1, 2021, if the hazard classification of the dam is significant.

(2) An owner of a dam who has an existing emergency action plan as of March 1, 2017, that the department determines has a sufficient inundation map and that the Office of Emergency Services determines has a sufficient emergency action plan pursuant to paragraph (4) of subdivision (a) is not subject to the timelines set forth in paragraph (1).

(e) An owner of a dam shall update an emergency action plan, including an inundation map, no less frequently than every 10 years, and sooner under conditions that include, but are not limited to, the following:

(1) A significant modification to the dam or a critical appurtenant structure, as determined by the department.

(2) A significant change to downstream development that involves people and property.

6162. Any regulation promulgated pursuant to this article shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare.

SEC. 12. Section 6307 of the Water Code is amended to read:



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6307. (a) (1) The department shall adopt, by regulation, a schedule of fees to cover the department's reasonable regulatory costs in carrying out the supervision of dam safety, safety, which may include, but is not limited to, the costs of reviewing an inundation map, the amounts necessary to repay budgetary loans, and a prudent reserve.

(2) The revenue generated by the fees imposed under this section shall be adjusted periodically for cost-of-living increases. If the director determines that the revenue collected during the preceding fiscal year was greater or less than the cost to operate the program, the director shall adjust the fees to compensate for the overcollection or undercollection of revenue. The department shall provide a schedule of fees to the Legislature and to every dam owner that has a permit or has applied for a permit, when any adjustment is made to the fees under this section.

(3) The schedule of fees adopted pursuant to this subdivision shall be based, in part, on the height of the dam on a per foot basis.

~~(b) (1) An annual fee shall be paid on or before January 31, 2004, July 1, 2004, and on or before July 1 of each succeeding year, based upon a fixed rate and height of the dam, including all enlargements thereto, substantially completed by or in operation on June 30, 2003, and on June 30 of each succeeding year. The fees collected on December 31, 2003, will be credited toward the fees due January 31, 2004. The annual fee shall be four hundred dollars (\$400) per dam, plus one hundred ten dollars (\$110) per foot of height. This fee shall be periodically adjusted, as described in subdivision~~

~~(a):~~

(2)



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(b) A penalty plus interest, as set forth in ~~Section 6428 of the Water Code,~~ subdivision (b) of Section 6428, shall be imposed for fees received after July 1 in any year, except that for the year 2003, the penalty plus interest shall be imposed for any fees received after January 31, 2004. year. This penalty does not apply to any supplemental billing issued by the department.

(c) For the purposes of this section, "height of the dam" means the vertical distance, to the nearest foot, from the natural bed of the stream or watercourse at the downstream toe of the barrier, as determined by the department, or from the lowest elevation of the outside limit of the barrier, as determined by the department, if it is not across a stream channel or watercourse, to the maximum possible water storage elevation.

(d) Notwithstanding subdivision ~~(b), (a)~~, the department shall limit the total annual fee per dam ~~to not more than seventy-five dollars (\$75)~~ if both of the following apply:

(1) The dam has a storage capacity of not more than 100 acre-feet.

(2) The governing body of a private school or the governing board of a public school certifies that the dam is used as a subject of study by its students.

(e) (1) Notwithstanding subdivision ~~(b), (a)~~, the department shall limit the total annual fee for dams or reservoirs located on farms or ranch properties ~~to one hundred fifty dollars (\$150) per dam, and sixteen dollars (\$16) per foot of height, no more than 20 percent of the fees assessed pursuant to subdivision (a).~~

(2) For purposes of this subdivision, "farm" has the same meaning as defined in Section 52262 of the Food and Agricultural Code.



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(f) (1) Privately owned dams with less than 100 acre-feet of storage capacity shall be assessed an annual fee in accordance with paragraph (1) of subdivision (e).

(2) As used in this subdivision, "privately owned" does not include dams owned by municipalities, water districts or companies, irrigation districts, private, investor owned or publicly owned utilities, or public agencies.

(g) Any regulation promulgated pursuant to this section shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare.

SEC. 13. Section 6428 of the Water Code is amended to read:

6428. (a) Any owner who fails to pay any annual further fee or any part of a further fee required to be paid pursuant to Section 6305 within the time required shall pay a penalty of 10 percent of the further fee or part of the further fee, plus interest at the rate of one-half of 1 percent per month, or fraction of a month, from the date on which the further fee or the part of the further fee became due and payable to the state until the date of payment.

(b) Any owner who fails to pay any annual fee or any part of any annual fee required to be paid pursuant to Section 6307 within the time required shall pay a penalty of 10 percent of the annual fee or part of the annual fee, in addition to the annual fee or part of the annual fee, plus interest at the rate of one-half of 1 percent per month, or fraction thereof, of a month, from the date on which the annual fee or the part of the annual fee became due and payable to the state until the date of payment.

SEC. 14. Section 6429 is added to the Water Code, to read:



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6429. The department may impose reservoir restrictions and levy property liens on any owner of a dam who fails to comply with any of the provisions of this part or any approval, order, rule, regulation, or requirement of the department.

SEC. 15. Section 6430 is added to the Water Code, to read:

6430. Any person who unlawfully constructs or operates a dam without approval from the department shall pay a fine in the amount of the annual fees and the late penalties that would have been due for the period starting from the date the dam was completed to the date the violation was identified by the department.

SEC. 16. Section 6431 is added to the Water Code, to read:

6431. An owner of a dam who fails to comply with a department order to prepare an acceptable emergency action plan shall pay the cost and expense incurred by the department to prepare the emergency action plan. The department's cost and expense shall be recoverable by the state from the owner.

SEC. 17. Section 6432 is added to the Water Code, to read:

6432. In addition to any penalties imposed by any other law, the department may impose a civil penalty of up to one thousand dollars (\$1,000) per day upon any owner of a dam who fails to comply with any provision of this part.

SEC. 18. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes



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the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 19. The Legislature finds and declares that Section 3 of this act, which amends Section 8589.5 of the Government Code, and Section 10 of this act, which adds Article 6 (commencing with Section 6160) to Chapter 4 of Part 1 of Division 3 of the Water Code, impose a limitation on the public’s right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to protect public safety, it is necessary to protect an emergency action plan submitted pursuant to this act as confidential. An emergency action plan contains a blueprint for emergency response following an incident involving a dam and details various failure scenarios of a dam and its related critical infrastructure. An emergency action plan also includes specific notification procedures and information about local emergency management officials such as their personal identifying information. In order to keep this information from individuals with improper motivations who could use the information maliciously to expose a dam’s vulnerabilities and could disrupt a critical emergency response it is in the state’s interest to limit public access to this information.



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LEGISLATIVE COUNSEL'S DIGEST

Bill No.

as introduced, ____.

General Subject: Supervision of dam safety.

(1) Existing law requires the Department of Water Resources to supervise the maintenance and operation of dams and reservoirs as necessary to safeguard life and property. Existing law prohibits the construction of any new dam or reservoir or the enlargement of any dam or reservoir from being commenced until the owner has applied for and obtained from the department written approval of plans and specifications.

This bill would require any person who unlawfully constructs or operates a dam without approval from the department to pay a specified fine. The bill would authorize the department to impose reservoir restrictions and levy property liens on an owner of a dam who fails to comply with certain provisions relating to dam safety or any approval, order, rule, regulation, or requirement of the department. The bill would authorize the department to impose a civil penalty of up to \$1,000 per day, in addition to any other penalty, upon any owner of a dam who fails to comply with these provisions



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relating to dam safety. The bill would require, if a dam is owned by one or more persons or entities, that the owners form or delegate legal and financial authority to a single entity that is required to be responsible for the operation and maintenance of the dam, as well as the payment of any fees or other costs associated with dam ownership.

(2) Existing law, the California Emergency Services Act, requires the Director of Emergency Services to coordinate the emergency services of all state agencies in connection with a state or local emergency. The act requires local governmental organizations, utilities, or other public or private owners of a dam to submit an inundation map that delineates potential flood zones that could result in the event of dam failure when the reservoir is at specified capacities and requires the Office of Emergency Services to review the maps to determine whether the maps meet prescribed requirements.

This bill would make an owner of a dam that is regulated by the state responsible for emergency preparedness with regard to the potential for loss of life and property resulting from the failure of a dam or its critical appurtenant structures, as defined. The bill would require the department, not later than July 1, 2017, to classify the public safety risk of all state jurisdictional dams, as prescribed, and to revise the classification of a dam to reflect changes in downstream population, critical infrastructure, and land use. The bill would require the owner of a dam that is regulated by the state, except for a dam classified as low hazard, to prepare and submit to the department for approval an inundation map showing the area that would be subject to flooding under various failure scenarios of the dam and other critical appurtenant structures.



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(3) The act requires the office to designate areas within which death or personal injury would, in its determination, result from the partial or total failure of a dam. The act authorizes the appropriate public safety agencies to adopt certain emergency procedures for the evacuation and control of these areas and requires the office to review and make recommendations concerning the procedures. Under the act, any person who violates any of the provisions of the act or who refuses or willfully neglects to obey any lawful order or regulation promulgated or issued as provided by the act is guilty of a misdemeanor.

This bill would instead require the owner of a dam, on or before a date determined by the level of hazard classification of the dam, to develop and submit to the department and the office an emergency action plan with certain components, based upon the inundation map or maps approved by the department. The bill would require the office to review and approve an emergency action plan, as prescribed, and to give priority in its review to dams with the highest hazard classification. The bill would require the owner of a dam to update this emergency action plan, including an inundation map, no less frequently than every 10 years, or sooner under prescribed conditions. The bill would require the owner of a dam who fails to comply with a department order to prepare an acceptable emergency action plan to pay the cost and expense incurred by the department to prepare the emergency action plan. The bill would require a dam owner to develop an emergency action plan in consultation with a local public safety agency that may be impacted by an incident involving the owner's dam, to the extent the local public safety agency wishes to consult. The bill would require a dam owner to conduct an emergency action plan notification exercise at least once annually with



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a local public safety agency that wishes to participate. The bill would authorize a public safety agency that adopts emergency procedures to review and update these procedures, as specified. The bill would exempt an emergency action plan from disclosure under the California Public Records Act. Because a violation of provisions added to the act relating to an emergency action plan or the willful neglect to obey any order or regulation relating to an emergency action plan would be a crime, this bill would impose a state-mandated local program.

(4) Existing law requires the department to adopt, by regulation, a schedule of fees to cover the department’s costs in carrying out the supervision of dam safety. Existing law requires the annual fee of \$400 per dam, plus \$110 per foot of height, adjusted as prescribed, to be paid on or before July 1.

This bill would require the department to adopt, by emergency regulation, a schedule of fees based in part on the height of the dam to cover the department’s reasonable regulatory costs in carrying out the supervision of dam safety, including, among other things, the costs of reviewing an inundation map, the amounts necessary to repay budgetary loans, and a prudent reserve.

(5) Existing law limits the total annual fee for a dam or reservoir located on a farm or ranch property or a privately owned dam with less than 100 acre-feet of storage capacity to \$150 per dam and \$16 per foot of height, adjusted as prescribed.

This bill would limit the total annual fee for the above-described dams to no more than 20% of the fees assessed pursuant to the schedule of fees described in paragraph (4).



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(6) Existing law requires a fee, based on estimated cost, be paid by an applicant for approval to build a new dam or reservoir or to enlarge a dam or reservoir, as specified. Existing law requires the department, in the event the actual cost exceeds the estimated cost by more than 15%, to require a further fee before final approval of a dam, calculated as prescribed.

Existing law requires an owner who fails to pay any annual fee imposed by the department for the supervision of dam safety or any part of the annual fee within the time required to pay a penalty of 10% of the annual fee or part of the annual fee, plus interest at the rate of 1% per month, or fraction of a month, from the date on which the fee became due and payable to the state until the date of payment.

This bill would apply this penalty to an owner who fails to pay a required further fee or any part of a required further fee based on exceeding the estimated cost of building a new dam, reservoir, or enlarging a dam or reservoir.

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(8) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.



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Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.



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AMENDED IN ASSEMBLY MARCH 21, 2017

CALIFORNIA LEGISLATURE—2017—18 REGULAR SESSION

ASSEMBLY BILL

No. 1270

Introduced by Assembly Member Gallagher

(Coauthor: Senator Nielsen)

February 17, 2017

An act to amend ~~Section 10560~~ Sections 6005 and 6102 of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 1270, as amended, Gallagher. ~~Stormwater resource planning. Dams and reservoirs: inspections and reporting.~~

Existing law requires the Department of Water Resources, from time to time, to make inspections of dams and reservoirs at state expense for the purpose of determining their safety. Existing law defines "owner" for purposes of these provisions.

This bill would require the department instead to, at least annually, make visual and physical inspections. The bill, on or before January 1, 2019, and annually thereafter, would require the department to submit a report to the Legislature that includes a 5-year infrastructure improvement, maintenance, and funding plan for state-operated and state-maintained dams and reservoirs, as specified. The bill would specify that "owner" includes a joint powers authority that owns, controls, operates, maintains, manages, or proposes to construct a dam or reservoir. The bill would also make various nonsubstantive changes.

~~Existing law, the Stormwater Resource Planning Act, authorizes one or more public agencies to develop a stormwater resource plan that meets certain standards.~~

~~This bill would make nonsubstantive changes in these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6005 of the Water Code is amended to
2 read:

3 6005. (a) "Owner" includes any of the following who own,
4 control, operate, maintain, manage, or propose to construct a dam
5 or reservoir:

6 ~~(a)~~

7 (1) The state and its departments, institutions, agencies, and
8 political subdivisions.

9 ~~(b)~~

10 (2) Every municipal or quasi-municipal corporation.

11 ~~(c)~~

12 (3) Every public utility.

13 ~~(d)~~

14 (4) Every district.

15 ~~(e)~~

16 (5) Every person.

17 (6) *Every joint powers authority.*

18 ~~(f)~~

19 (7) The duly authorized agents, lessees, or trustees of any of the
20 foregoing.

21 ~~(g)~~

22 (8) Receivers or trustees appointed by any court for any of the
23 foregoing.

24 ~~"Owner"~~

25 (b) "Owner" does not include the United States.

26 SEC. 2. Section 6102 of the Water Code is amended to read:

27 6102. (a) The department, ~~from time to time, at least annually,~~
28 shall make *visual and physical* inspections of dams and reservoirs
29 at state expense for the purpose of determining their ~~safety but~~
30 ~~shall require owners to perform at their expense safety.~~ *An owner*
31 *of a dam or reservoir shall perform, at the owner's expense, such*
32 *work as necessary to disclose information sufficient to enable the*
33 *department to determine conditions of dams and reservoirs in*
34 *regard to their safety and to perform at their expense the safety of*
35 *the dam or reservoir and shall perform, at the owner's expense,*

1 other work necessary to secure maintenance and operation ~~which~~
2 that will safeguard life and property.

3 (b) (1) On or before January 1, 2019, and annually thereafter,
4 the department shall submit a report to the Legislature that
5 includes a five-year infrastructure improvement, maintenance,
6 and funding plan for state-operated and state-maintained dams
7 and reservoirs. Each year the report shall be updated to reflect
8 anticipated maintenance and infrastructure improvement costs.

9 (2) A report to be submitted pursuant to paragraph (1) shall be
10 submitted in compliance with Section 9795 of the Government
11 Code.

12 ~~SECTION 1. Section 10560 of the Water Code is amended to~~
13 ~~read:~~

14 ~~10560. This part shall be known, and may be cited, as "The~~
15 ~~Stormwater Resource Planning Act."~~

16
17 _____

18 **REVISIONS:**

19 **Heading—Line 2.**

20 _____