

WATER CODE SECTIONS 12899-12899.11

12899. The following definitions govern the construction of this chapter:

(a) "State Water Resources Development System" means the State Water Resources Development System as described in Section 12931, including, but not limited to, all portions of the project authorized pursuant to the Central Valley Project Act (Part 3 (commencing with Section 11100)) and additions thereto.

(b) "Encroachment" means any installation of any tower, pole, pipe, fence, building, structure, object, or improvement of any kind or character that is placed in, on, under, or over any portion of the State Water Resources Development System or other use of the department's right-of-way, including the alteration of the ground surface elevation by more than one foot, or the planting of trees, vines, or other vegetation on the department's right-of-way that may pose a threat to the physical integrity of any facility of the State Water Resources Development System or that could interfere with the department's rights with regard to access, inspection, repair, or the operation and maintenance of any State Water Resources Development System facility.

(c) "Person" means any person, firm, partnership, association, corporation, other business entity, nonprofit organization, or governmental entity.

(d) "Right-of-way" means any property interest acquired by the department for State Water Resources Development System purposes, including but not limited to, an easement, license, permit, joint use agreement, or fee ownership.

12899.1. (a) Except as provided by Section 12899.8, no person shall make any alteration, improvement, encroachment, or excavation within the right-of-way acquired for the State Water Resources Development System, without first obtaining the written permission of the department.

(b) Any person proposing to make an alteration, improvement, encroachment, or excavation within the right-of-way acquired for the State Water Resources Development System shall submit an application to the department on a form prescribed by the department, along with other reports, studies, and analyses as required by the department.

(c) The department may issue a written permit, in accordance with this chapter, authorizing the permittee to do any act that is not inconsistent with the functioning, operation, maintenance, enlargement, and rehabilitation of any portion of the facilities of the State Water Resources Development System.

(d) By issuing the permits, the department is not responsible for the competence or reliability of the permittee or the encroachment.

(e) The department shall approve or deny an application for an encroachment permit not later than 60 days from the date of receipt of the complete application, as determined by the department. An application for a permit is complete when all application requirements and other statutory requirements, including, but not limited to, the California Environmental Quality Act (Division 13 commencing with Section 21000) of the Public Resources Code, have been met. Not later than 30 days from the date on which the application is received, the department shall determine whether an application is complete. The department shall not unreasonably deny an application for a permit. If the department denies an application for a permit, it shall provide an explanation of the reason for the denial at the time of notifying the applicant of the denial.

(f) Except as provided by Section 12899.8, any person who makes an alteration, improvement, encroachment, or excavation within the right-of-way acquired for the State Water Resources Development System, without a permit, is guilty of a misdemeanor.

12899.2. (a) Any act performed under the authority of a permit issued pursuant to this chapter shall be in accordance with the applicable provisions of this chapter and the terms and conditions of the permit.

(b) The department may prescribe requirements in the permit, including a requirement that the permittee pay the entire expense of restoring the affected State Water Resources Development System facilities to a condition equivalent to that before the work was performed, and requirements relating to the location and manner in which the work shall be performed, as determined by the department to be necessary for the protection of the department's facilities.

(c) Any permit issued to a permittee shall include a provision that requires the permittee to relocate or remove the encroachment in the event the future repair, rehabilitation, or improvement of the State Water Resources Development System requires the relocation or removal of the encroachment at the sole expense of the permittee.

(d) The department shall charge an application processing and review fee for a permit to use the right-of-way.

(e) The department may inspect and supervise the work performed under any permit issued under this chapter, in which event the permittee shall pay the reasonable cost of that inspection and supervision to the department, not to exceed the amount estimated by the department at the time of issuing the permit or commencement of work. If the actual costs exceed the estimated costs, an additional fee shall be required by the department before final permit approval or at the end of the inspection. If the actual costs are less than the estimated costs, the department shall refund the difference.

(f) Before granting a permit under this chapter, the department may require any applicant to provide proof of insurance naming the department as an additional insured in an amount reasonably necessary to protect the state's interest.

(g) Before granting a permit under this chapter, the department may require any applicant, other than a county, city, city and county, or public agency that is authorized by law to establish and maintain any works or facilities within the department's right-of-way, to file with the department a satisfactory bond payable to the department in an amount that the department determines to be sufficient, conditioned on the proper compliance by the permittee with this chapter. The department may require a bond from a county, city, city and county, or public agency that, prior to submitting an application, failed to comply with this chapter or with the conditions of a previous permit.

12899.3. No corporation has any franchise rights within the department's right-of-way, and no county, city, or city and county has any right to grant a franchise within that right-of-way. This section does not apply to a State Water Resources Development System right-of-way located within city, county, or city and county public roadways.

12899.4. The department may delegate, to any entity that has a contract with the department pursuant to Section 11625, any of the department's powers, duties and authority, other than approval, under this chapter as to any facility of the State Water Resources Development System that primarily benefits that entity, and may withdraw that delegation of authority.

12899.5. (a) Except as provided by Section 12899.8, if any encroachment exists within the department's right-of-way, the department may require the removal of the encroachment in the manner provided in this section.

(b) Except as provided in subdivision (e), notice shall be given to the owner, occupant, or person in possession of the encroachment, or to any other person causing or permitting the encroachment to exist, by serving a notice including a demand for the immediate removal of the encroachment from within the right-of-way. The notice shall describe the encroachment with reasonable certainty as to its character and location. In lieu of service upon the person, service of the notice may also be made by registered mail and posting for a period of five days, a copy of the notice on the encroachment described in the notice. In the case of an owner, occupant or person in possession, who is not present in the county, the notice may be given to an agent in lieu of service by mailing and posting.

(c) The department may remove from the State Water Resources Development System any right-of-way encroachment that meets both of the following criteria:

(1) Not later than 60 days from the date on which a notice was given pursuant to subdivision (b), the owner, occupant, or person in possession of the encroachment has not asserted a right to be in possession consistent with Section 12899.8 and has not removed, or commenced to remove in a diligent manner, the encroachment.

(2) The encroachment obstructs, threatens, or prevents the proper operation, maintenance, or rehabilitation of the State Water Resources Development System.

(d) The department may immediately remove from the State Water Resources Development System any right-of-way encroachment that meets both of the following criteria:

(1) Not later than five days from the date on which a notice is given pursuant to subdivision (b), the owner, occupant, or person in possession of the encroachment has not asserted a right to be in possession consistent with Section 12899.8 and has not removed, or commenced to remove in a diligent manner, the encroachment.

(2) The encroachment poses an imminent threat to the integrity of one or more features of the State Water Resources Development System.

(e) In the case of an emergency, the department has the authority to take any action necessary to avert, alleviate, repair, or mitigate any threat to the State Water Resources Development System. For the purposes of this chapter, "emergency" means a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.

(f) If the department removes any encroachment upon the failure of the owner to comply with the notice pursuant to this section, the department may recover the expense of the removal, costs and expenses of suit, including attorneys fees, and, in addition, the sum of one thousand dollars (\$1,000) for each day the encroachment remains after the expiration of the applicable response period described in subdivision (c) or (d).

(g) If the owner, occupant, or person in possession of the encroachment, or person causing or suffering the encroachment to exist, or the agent of any of these parties, disputes or denies the existence of the encroachment, asserts a right to be in possession consistent with Section 12899.8, or refuses to remove or permit the removal of the encroachment, the department may commence, in any court of competent jurisdiction, an action to abate the encroachment as a public nuisance. If judgment is recovered by the department, it may, in addition to having the encroachment adjudged a nuisance and abated, recover one thousand dollars (\$1,000) for each day the encroachment remains after the expiration of the applicable response period described in subdivision (c) or (d), and may also recover the expense of that removal, and costs and expenses of the suit, including attorney's fees.

12899.6. (a) Unless a person is otherwise authorized, by permit or agreement, to do so, it is unlawful for any person to do any of the following acts:

(1) Drain water, or permit water to be drained, from the person's lands onto the State Water Resources Development System right-of-way by any means, which results in damage to the system or the department's right-of-way, except where the water naturally drains onto the department's right-of-way.

(2) Obstruct any natural watercourse in a manner that does any of the following:

(A) Prevents, impedes, or restricts the natural flow of waters from any portion of the department's right-of-way into and through the watercourse or State Water Resources Development System cross drainage structures, unless other adequate and proper drainage is provided.

(B) Causes waters to be impounded within the department's right-of-way that damages the State Water Resources Development System or the department's right-of-way, except where the water naturally drains onto the department's right-of-way.

(C) Causes interference with, or damages or makes hazardous the operation, maintenance, and rehabilitation of, the State Water Resources Development System.

(3) Stores or distributes water for any purpose so as to permit the water to overflow onto, causing damage to, or to obstruct or damage any portion of, the State Water Resources Development System or the department's right-of-way.

(b) When notice is given by the department, in the manner provided in Section 12899.5, to any person permitting a condition to exist, as described in subdivision (a), the person shall immediately cease and discontinue the diversion of waters or shall discontinue and prevent the drainage, seepage, or overflow and shall repair, or pay for the repair of, any damage to the State Water Resources Development System or the department's right-of-way. The person to whom the notice is provided may challenge, administratively in accordance with regulations adopted pursuant to Section 12899.9, or in a court of competent jurisdiction, the propriety of the determination by the department.

(c) If any person is notified pursuant to subdivision (b) and fails, neglects, or refuses to cease and discontinue the diversion, drainage, seepage, or overflow of the waters or to make or pay for the repairs, the department may make repairs and perform work as it determines necessary to prevent the further drainage, diversion, overflow, or seepage of the waters.

(d) The department may recover in an action at law, in any court of competent jurisdiction, the amount expended for those repairs and work, and in addition, the sum of one thousand dollars (\$1,000) for each day the drainage, diversion, overflow, or seepage of the waters is permitted to continue, after the service of the notice in the manner specified in this chapter, together with the costs and expenses, including attorney's fees, incurred in the action.

12899.7. Any person who by any means willfully or negligently injures or damages any feature of the State Water Resources Development System or the department's right-of-way is liable for necessary repairs, and the department may recover in an action at law the amount expended for the repairs, together with the costs and expenses, including attorney's fees, incurred in that action.

12899.8. (a) Notwithstanding any other provision of this chapter, and except as otherwise provided in an agreement between the department and landowner or predecessor-in-interest, any person owning a legal real property interest over a portion of the State Water Resources Development System right-of-way, or who has an agreement with the department for the construction, operation, and maintenance of an encroachment, is not required to obtain a permit from the department for exercising their property or other rights, but shall submit their plans to the department for review and comment before undertaking any additional work within the department's right-of-way. A person's legal real property or other interests shall be determined by the department upon the review of the appropriate document, agreement, or reservation of rights. The department shall respond not later than 30 days from the date of the receipt of the plans.

(b) Notwithstanding any other provision of this chapter, any holder of a current State Water Resources Development System encroachment permit on January 1, 2007, or a person who has an agreement with the department for the construction, operation, and maintenance of an encroachment as of that date, may continue the authorized encroachment pursuant to the terms, conditions, and limitations of that permit or agreement.

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

12899.10. This chapter does not apply to the activities of a public agency that operates facilities of the State Water Resources Development System that are jointly owned by the state and the United States, including facilities of the San Luis Unit of the Central Valley Project, if the activities are conducted pursuant to, and consistent with, an agreement with the United States for the operation and maintenance of those facilities.

12899.11. (a) The department, not later than 60 days from the date on which it receives a complete application, shall issue a general encroachment permit, for a period not to exceed 10 years, for routine operation and maintenance activities of public agencies with a contract with the department for delivery of water pursuant to subdivision (b) of Section 12937.

(b) For the purposes of this section, "operation and maintenance" means inspection, equipment testing and maintenance, water quality monitoring and testing, weed and pest abatement, and other activities that the department determines are consistent with existing agreements between the department and its water contractors.