

RECLAMATION BOARD ENCROACHMENT PERMIT

OVERVIEW

The California State Reclamation Board (Reclamation Board) is required to enforce appropriate standards for construction, maintenance, and protection of flood-control facilities. The Reclamation Board has jurisdiction over designated floodways, “project” levees and the area between levees, and the stream reaches listed in the California Code of Regulations under “Title 23. Waters. Division 1. Reclamation Board”. The board generally has jurisdiction over streams within the Central Valley and Lake County, including all tributaries and distributaries of the Sacramento and San Joaquin Rivers and Tulare and Buena Vista Basins. The board may also assert jurisdiction over other streams where there are flood-control projects.

The Reclamation Board may issue permits for proposed activities (encroachments) that may affect “project works” as long as the applicant ensures that the activity maintains the integrity and safety of flood-control project levees and floodways and is consistent with the flood-control plans adopted by the Reclamation Board or the California legislature. “Project works” are all or any component of a flood-control project within the Reclamation Board’s jurisdiction that the Reclamation Board or the legislature has approved or adopted. Project works include levees, bank protection projects, weirs, pumping plants, floodways, and any other related flood-control works or rights-of-way (ROWs) that have been constructed using State or federal funds; project works also include flood-control plans. Flood-control plans include project flood channels without levees and project channels with levees, any flowage areas that are part of the flood-control project, areas where there are flowage easements, and designated floodways.

The Reclamation Board recognizes the increasing desire to restore lands that are under its jurisdiction, particularly through CALFED actions. The board has developed a draft resolution (No. 99-9) to address this issue. The draft resolution states that:

- The Reclamation Board supports habitat restoration efforts and recognizes that restoration projects may provide flood-control benefits.
- The board will require hydraulic modeling and other engineering studies of proposed projects when needed and will require hydraulic impacts to be mitigated to a less-than-significant level.
- As soon as the hydraulic model being developed by the U.S. Army Corps of Engineers (USACE) for the Sacramento and San Joaquin River Basins Comprehensive Study is functional, the Reclamation Board will make it available to all permit applicants.

In summary, the board will be proactive in addressing proposals for restoration projects, but it evaluates restoration work as it does any other encroachment. Also, the board requires a Safe Harbor Agreement under the Endangered Species Act for restoration projects in case

vegetation management (e.g., trimming or removal of elderberry bushes) will be required to maintain the design carrying capacity of channels where habitat has been restored.

Figure 20 illustrates the Reclamation Board encroachment permit process.

WHO NEEDS TO COMPLY?

CALFED actions that may be within the jurisdiction of the Reclamation Board include:

- the placement, construction, reconstruction, removal, or abandonment of any landscaping, culvert, bridge, conduit, fence, projection, fill, embankment, building, structure, obstruction, or encroachment within an area under the jurisdiction of the Reclamation Board; or
- work of any kind within an area for which there is an adopted flood-control plan. This work may include the planting, excavation, or removal of vegetation and the repair or maintenance of flood-control facilities that involves cutting into the levee (wholly or in part).

CALFED actions may require Reclamation Board permits if they involve relocations of diversion facilities, revegetation in areas near flood-control facilities or within designated floodways, improvement or realignment of levees, and dredging to improve conveyance capacity.

HOW LONG DOES THE APPROVAL PROCESS TAKE?

The Reclamation Board may take 30 days–9 months to issue a permit, depending on the complexity of the proposed project and the level of controversy associated with it.

WHAT INFORMATION DOES THE APPLICANT NEED TO PROVIDE?

The applicant must provide the following:

- a description of the proposed work, including a statement of the dates the planned construction will begin and end, and four copies of exhibits and drawings that depict the project or use;
- the location of the project site and color photographs that show two views of the site;

Safe Harbor Agreements are voluntary agreements between USFWS or NMFS and cooperating nonfederal landowners to benefit endangered and threatened species while giving the landowners assurances from additional restrictions. Any nonfederal landowner can request the development of a Safe Harbor Agreement. These agreements are between the landowner and USFWS or NMFS or between USFWS or NMFS and other stakeholders (such as State natural resource agencies, tribal governments, local governments, conservation organizations, or businesses). USFWS or NMFS will provide assurances (by issuing an “enhancement of survival” permit) that, when the term of the agreement ends, the participating landowner may use the property in any otherwise legal manner that does not move it below baseline conditions. In return for the participant’s efforts, USFWS or NMFS will authorize incidental take through the Section 10(a)(1)(A) process of ESA.

- a completed copy of the Reclamation Board's environmental questionnaire and a copy of any draft and final environmental review documents prepared for the project;
- complete plans and specifications that show the proposed work, a location map that shows the site of the work with relation to topographic features, a plan view of the area, and an adequate cross section through the area of the proposed work; and
- the names and addresses of all owners of land adjacent to the property where the project is located.

Additional information, such as geotechnical exploration reports, soil testing results, hydraulic or sediment transport studies, biological surveys, environmental surveys, and other analyses, may be required at any time before the Reclamation Board acts on the application.

WHAT IS THE FEE?

There is no fee to receive a Reclamation Board encroachment permit.

WHAT DOES THE APPLICATION AND EVALUATION PROCESS ENTAIL?

1. The applicant should contact the Reclamation Board for a list of project levees and designated floodway areas to determine whether the proposed project falls within the Reclamation Board's jurisdiction.
2. The applicant submits the permit application to the local agency responsible for maintaining the levees within the area of the proposed work (such as a reclamation district, drainage district, flood-control district, levee district, city, or county). This agency must endorse the application.
3. After receiving the local maintaining agency's endorsement, the applicant submits the application, including CEQA documentation (if available), to the Reclamation Board. If the maintaining agency delays or declines to endorse the application, the applicant may submit it to the Reclamation Board with a written explanation of why it was not endorsed by the maintaining agency.
4. The Reclamation Board staff sends a notice of the pending application to the owners of adjacent property, notifies the applicant if additional studies are required, sends a copy of the application to the USACE for review and comment, and reviews the potential environmental effects of the proposed project.
5. If the project is not considered controversial (i.e., no serious protests are filed with the Reclamation Board) and it meets Reclamation Board design guidelines, the board's staff can issue a permit. If the project is considered controversial or requires a variance to Reclamation Board guidelines, the board itself reviews the permit application. This review includes a public hearing; the Reclamation Board will file a notice with interested parties and those that may be affected by the project. An

application for a project that does not require variances may be sent to the board for a hearing and decision if a potentially affected party protests the application. The board meets the third Friday of every month.

The Reclamation Board has some discretion regarding whether to require a permit for a project, based on whether the project could alter patterns or timing of flooding or floodflows downstream or upstream of the project. For example, a permit may not be required for a project that involves a change in crops in a river bypass system to benefit waterfowl, even though it would take place within a designated floodway. However, the project proponent should coordinate with the Reclamation Board to determine whether a permit is required.

DOES THIS PROCESS TRIGGER THE NEED FOR COMPLIANCE WITH OTHER REGULATIONS?

CEQA compliance is required before the Reclamation Board issues a permit.

WHAT ARE THE OPPORTUNITIES FOR FACILITATING COMPLIANCE WITH THIS PROCESS?

The following are recommended steps to simplify and streamline the Reclamation Board permitting process for CALFED actions.

- **Coordinate early with the local reclamation district, other local entities, and affected landowners.** Reclamation Board staff members rely heavily on input from local reclamation districts and others responsible for maintaining flood integrity in the project area. During the planning and design phase of the particular action, the project proponent should coordinate with the local reclamation district and other entities to identify compliance needs, commitments, and mitigation options and to resolve issues before a permit is processed. In addition, neighboring landowners may have an interest in the project and the way in which it affects the flood integrity of surrounding lands. Discussions with interested parties may be appropriate to resolve any controversy about these potential effects. Early consultations may make it easier to develop the project description and construction plans and specifications so that flood-control facilities and effects on other properties are avoided.
- **Ensure that the application package is complete and that review of environmental issues is adequate.** Project applicants should ensure that the application package is complete and includes a detailed project description. Many delays in processing permit requests have involved projects where CEQA review was insufficient or analysis of hydraulic impacts was incomplete. Changes in flood patterns for neighboring properties, property rights issues, and detrimental changes in levee integrity can also create controversy and delays.
- **If hydraulic modeling is required, determine whether there are existing hydraulic models that cover the project area.** If the Reclamation Board requires modeling of the potential hydraulic effects of a proposed project, using an existing model can save considerable time and expense. The project applicant should coordinate with the Reclamation Board, USACE, and local reclamation districts to

determine whether hydraulic models that cover the area of interest have been created, and, if so, whether an existing model is suitable for the required analysis and could be modified to evaluate the proposed project for a reasonable cost.

- **Group projects that have similar effects or that are located in the same geographic area.** Reclamation Board permits may be issued for certain grouped actions that have similar effects or are located in a similar geographic area. It may be appropriate to group, or “bundle”, CALFED actions by functionality (e.g., fish screens for small diversions), geographic location, or both, to minimize the number of applications to be prepared.
- **Coordinate with the Reclamation Board to develop master permits.** The Reclamation Board can issue a master permit for certain programs under a particular agency. A Reclamation Board permit would still be required for subsequent individual projects, but as long as master permit conditions were met, the approval authority may be delegated to the general manager of the Reclamation Board. A public review period would not be required for approval of actions that fall under the scope of the master permit. It may be appropriate for a particular agency that proposes several similar types of actions under CALFED to coordinate with the Reclamation Board to develop a master permit.



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