

Executive Department

State of California

EXECUTIVE ORDER B-39-17

WHEREAS during January and February of 2017, atmospheric river storm systems struck California, bringing massive amounts of precipitation; and

WHEREAS I proclaimed states of emergency on January 23, 2017 and March 7, 2017, for much of California resulting from these storms; and

WHEREAS on February 12, 2017, I proclaimed a State of Emergency to exist as a result of damage to the Lake Oroville Dam gated spillway, as well as erosion to and a potential of failure of its emergency spillway, causing local officials to evacuate hundreds of thousands of people from the Counties of Butte, Sutter, and Yuba; and

WHEREAS state officials and employees have worked tirelessly to make repairs to the emergency spillway as well as the gated spillway, both of which experienced damage as a result of the significant amount of water being released from Lake Oroville Dam due to the extensive precipitation received this winter; and

WHEREAS Lake Oroville Dam is the largest state-operated dam in California and regulates outflow from Lake Oroville to provide a portion of the water to 25 million Californians and hundreds of thousands of acres of irrigated farmland, significant hydroelectricity production, and freshwater releases to control salinity intrusion in the Sacramento-San Joaquin Delta and for fish and wildlife protection and other beneficial uses; and

WHEREAS operational spillways are crucial to the safe operation of Lake Oroville Dam for these purposes given the range of anticipated hydrological conditions in any given year; and

WHEREAS the gated spillway is currently severely impaired and must be significantly repaired or replaced; the emergency spillway likewise requires immediate repairs and supplemental work; and this work must be undertaken immediately so that the spillways are operational by the beginning of the wet season for the 2017-2018 water year; and

WHEREAS state officials have been sensitive to tribal, wildlife, and environmental concerns, by conducting fish rescues and implementing protective measures for Bald Eagles, working with a tribal monitor and engaging in project-specific cultural site assessments, and implementing stormwater management and dust mitigation plans; and

WHEREAS snowpack is at 164% of average statewide; and

WHEREAS runoff from the substantial snowpack will create the risk of flooding through spring and early summer throughout much of the state; and

WHEREAS under section 8571 of the California Government Code, I find that strict compliance with various statutes and regulations specified in this order would prevent, hinder, or delay the mitigation of the damaged spillways at Lake Oroville Dam and the effects of the significant precipitation received during the January and February storms.

NOW, THEREFORE, I, EDMUND G. BROWN JR., Governor of the State of California, in accordance with the authority vested in me by the Constitution and statutes of the State of California, in particular Government Code sections 8567 and 8571 of the California Government Code, do hereby issue this Executive Order, effective immediately.

IT IS HEREBY ORDERED THAT:

1. The orders and provisions contained in my January 23, 2017 Proclamation, my February 12, 2017 Proclamation, and my March 7, 2017 Proclamation remain in full force and effect except as modified herein.
2. All state agencies are directed to assist the Department of Water Resources (Department) and the State Water Resources Control Board (Water Board) as requested and prioritize any actions required for such assistance.
3. For purposes of carrying out the directives in this Executive Order or for any other actions necessary to expedite response and recovery of the gated spillway, emergency spillway and related infrastructure, debris removal and disposal, and prevention or restoration of impacts to fish and wildlife resources or related facilities resulting from the response and recovery activities, Division 13 (commencing with section 21000) of the Public Resources Code and regulations adopted pursuant to that Division are hereby suspended. This suspension applies to any actions taken by state agencies in furtherance of this Executive Order, as well as to any necessary permits or approvals required to complete these actions. Additionally, this suspension includes projects that will remove, destroy, or significantly alter an historical resource when that resource represents an imminent threat to the public of bodily harm or of damage to adjacent property or when the project has received a determination by the State Office of Historic Preservation pursuant to sections 5023-5028 of the Public Resources Code.

IMMEDIATE REPAIRS TO THE LAKE OROVILLE DAM

4. The Department shall exercise its full authority, including but not limited to Water Code sections 128, to take all actions necessary for the response, recovery, and rehabilitation of the gated spillway, emergency spillway, and related infrastructure; debris removal and disposal; and to prevent impacts to, and provide preservation of, fish and wildlife resources and associated infrastructure relating to the response and recovery activities. Water Code section 11465 is suspended to the extent necessary for the actions to be implemented.
5. To streamline the recovery of the dam and its power-producing facilities, Chapter 5 (commencing with section 25400) of Division 15 of the Public Resources Code is suspended.
6. To the extent recovery requires surface mining as that term is defined in Chapter 9 (commencing with section 2710) of Division 2 of the Public Resources Code, that Chapter is suspended.
7. For actions called for in this Proclamation, the Central Valley Flood Protection Board Executive Officer shall issue any applicable permits as necessary to expedite urgent actions. The requirements of California Code of Regulations, title 23, section 17 that an emergency permit be issued only during flood season, and that an application must be submitted within 30 days, are waived.
8. The Central Valley Flood Protection Board Executive Officer, on behalf of the State of California, shall request that the Secretary of the Army, on the recommendation of the Chief of Engineers of the Army Corps of Engineers, grant any permission required

pursuant to section 14 of the Rivers and Harbors Act of 1899, as codified in section 408 of title 33 of the United States Code.

9. The Department is directed to work cooperatively with landowners or occupants to enter into voluntary access or other agreements for the purposes of planning and installing the spillways and related infrastructure at or near Oroville Dam to the extent necessary to accommodate access to required locations. Where the Department is unable to reach an agreement with landowners or occupants using the Department's best efforts, the Department is authorized to act under Government Code section 8572 and Water Code section 11590 is suspended.
10. The provisions of California Penal Code section 396 prohibiting price gouging in times of emergency are hereby reinstated as of the date of this Order. The 30-day time period limitation under subdivision (b) of section 396 is hereby waived. For the purposes of calculating the price differential, the price of goods or services shall be compared to the price in effect as of the date of this Order.
11. The Department, the Department of Fish and Wildlife, the California Department of Transportation, and the Governor's Office of Emergency Services shall ensure adequate state staffing to expedite disaster response and recovery efforts, including work to prevent, minimize, or repair damage to habitat, fisheries, state-run fish hatcheries, or wildlife areas. For the departments listed in this directive, and consistent with applicable federal law, work hour limitations for retired annuitants, permanent and intermittent personnel, and any overtime restrictions for state management and senior supervisors, are suspended. Furthermore, Government Code sections 21220, 21224(a), and 7522.56(b), (d), (f), and (g), and the time limitations in Government Code section 19888.1 and California Code of Regulations, title 2, sections 300-303 are suspended. The Director of the California Department of Human Resources must be notified of any individual employed pursuant to these waivers.
12. In order to minimize environmental and other impacts to the local community and environment, the Department shall closely coordinate and share data and information with the Butte County Sheriff's Office and Butte County Air Quality Management District, and also with relevant state and federal agencies, including the Department of Fish and Wildlife, the State Water Resources Control Board, the Air Resources Board, the Central Valley Flood Protection Board, and the Federal Energy Regulatory Commission.
13. The Department, in coordination with the Department of Parks and Recreation, will develop plans for additional access points to Lake Oroville for recreational use, and shall work with the Federal Energy Regulatory Commission to implement those plans as expeditiously as possible.

FLOOD CONTROL MEASURES

14. To increase available capacity in river and flood control channels statewide and to utilize anticipated high water flows to recharge local groundwater while minimizing flooding risks, the State Water Resources Control Board and California Regional Water Quality Control Boards shall prioritize temporary water right permits, water quality certifications, waste discharge requirements, and conditional waivers of waste discharge requirements to accelerate approvals for projects throughout the state that enhance the ability of a local

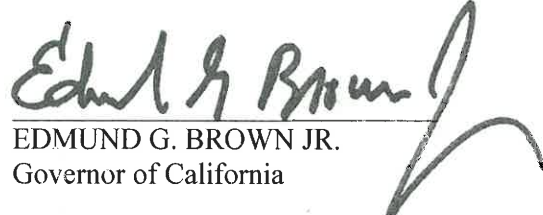
or state agency to capture high runoff events for local storage or recharge, consistent with water rights priorities and protections for fish and wildlife.

This Executive Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

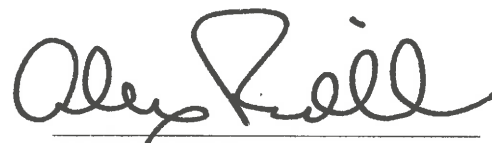
I FURTHER DIRECT that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.



IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 6th day of April 2017.


EDMUND G. BROWN JR.
Governor of California

ATTEST:


ALEX PADILLA
Secretary of State