



CALIFORNIA CENTRAL VALLEY  
**FLOOD CONTROL**  
ASSOCIATION

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February 16, 2023

HQ, U.S. Army Corps of Engineers  
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**Subject: Docket Number COE-2021-0008, Proposed Rulemaking to Corps Natural Disaster Procedures**

The California Central Valley Flood Control Association (CCVFCA/Association) submits these comments on the proposed rulemaking for 33 CFR Part 203 Natural Disaster Procedures: Preparedness, Response, and Recovery activities of the U.S. Army Corps of Engineers (Corps) (Docket Number COE-2021-0008) due February 16, 2023. CCVFCA's members are comprised of more than 75 public agencies with flood protection authority and responsibility, primarily representing reclamation districts, levee districts, cities, counties, joint powers authorities, and other special districts. Some of these agencies are non-federal sponsors themselves while others act as local maintaining agencies under state law, assisting with the operation and maintenance of federally authorized levees. As the local maintaining agencies for a large portion of the 1,600 miles of federally authorized levees in the California Central Valley turned over by the Corps to the State in the 1950s, our members have been long-time and reliable partners of the Corps in reducing flood risk.

The Association appreciates the effort that the Corps has made in updating the Public Law 84-99 procedures to capture the numerous updates in the legislation since 2003. We believe you have captured lessons learned from previous events and have considered our preliminary scoping comments from 2015. Overall, we agree with the direction that the Corps is taking to support risk-informed eligibility determination, which includes encouraging broader use of flood risk management actions, providing flexibility, and reinforcing the Corps commitment to transparency and partnering.

The Association understands that the proposed rehabilitation eligibility criteria is a four-pronged risk informed approach including: (1) Operations, Maintenance, and Inspection Plan (OMIP); (2)

emergency preparedness; (3) participation in levee safety program activities; and (4) sharing information, rather than solely relying on inspection findings to determine whether a system is active in program. While the Association generally agrees with this approach, we do have some significant concerns. The degree of discretion in the proposed rulemaking is vast. Additional clarification is warranted regarding how this proposed rulemaking will be applied consistently across Corps Districts. These details may be incorporated in subsequent Engineering Regulations and Engineering Pamphlets, and we welcome the opportunity to partner with the Corps to assist in ensuring those details are clear and equitable, not subjective. We are also concerned with how the Corps will transition from the current process to this proposed regulation. Sponsors and local maintaining agencies will need time to transition to this revised approach. While we agree with this more risk informed approach, there is concern that the proposed regulations will be tied to the Levee Design and Construction update. The inclusion of this risk-informed approach will significantly increase levee design, analysis, and construction costs. Small levee modifications will face investigation, design, and analysis costs equal to or greater than the construction project.

Attached is a summary of our detailed comments and recommendations.

The Association appreciates the opportunity to provide these comments and looks forward to the improved communication and stronger relationship with the Corps that will enhance the long-term sustainability and resiliency of the flood control system protecting the Central Valley. We welcome an opportunity to work with the Corps to ensure that the guidance documents supporting this proposed rulemaking are clear and equitable. Please contact Ric Reinhardt at (916) 812-9497 or [reinhardt@woodrogers.com](mailto:reinhardt@woodrogers.com) for any questions to or to discuss these comments.

Sincerely,  
Melinda Terry,

A handwritten signature in black ink, appearing to read "Melinda Terry". The signature is fluid and cursive, with the first name "Melinda" written in a larger, more prominent script than the last name "Terry".

Executive Director

Subpart	Section	Paragraph	Comment	Recommend Change
A	203.11	c	This section states that the Corps does not transfer Federal funds to non-Federal sponsors or other responsible State, Tribal, or local interests for the non-Federal performance of assistance activities described in this part. This should be allowed.	This should be allowed. In some cases, especially smaller damage sites, the non-Federal sponsor or other responsible interest could accomplish the repair more efficiently freeing up USACE resources to take on the larger rehabilitation projects.
B	203.22		What kind of assistance will not be provided?	Clarify, does this exclude technical assistance?
B	203.22		Please clarify what is meant by denial based entirely on a lack of fiscal resources. In some cases the maintaining agency may have exhausted their funds and reserves to respond to the emergency and more funding is needed to address the repair.	Clarify.
B	203.22	e	Floodplain Management Plans should not be linked to PL 84-99 eligibility.	Remove this as a criteria.
C	203.31	a	Add technical assistance to the last sentence.	Add technical assistance to the last sentence.
	203.31	b	The Corps will determine if assistance is justified for reducing the risk to agricultural lands if in absence of the Corps assistance, the project is likely to sustain significant damages.	How will the Corps measure significant damages?
D	203.41	d(2)(iii)	This section should be limited to public officials.	Remove "and the public"
D	203.41	d(2)(v)	Evacuation notification is typically outside the jurisdiction of the non-federal sponsor and local maintaining agency.	This requirement should be removed.
D	203.41	d(3)	This paragraph should be refined to make it clear that the public outreach activities are not meant for the general public but rather, stakeholders such as County emergency services, fire, sheriff, etc.	
D	203.42	a	A non-Federal FRM project that is determined to meet the initial eligibility requirements will be eligible for rehabilitation assistance beginning on the date the responsible Corps District Commander notifies the non-Federal sponsor of the project in writing of the determination. If this is the criteria, there should be a specific timeline for the Corps to make the determination. If the Corps exceeds that timeline, the system should automatically be eligible.	Recommend establishing a timeline for the Corps to make the determination.
D	203.43	b(2)	This paragraph is extremely subjective. How will this be consistently applied?	Provide additional guidance on how this will be applied consistently. There should be a combination of written expectations (checklists, examples) and personal interaction. Developing a working relationship with consistent individuals will allow both to build trust and understand the progress/limitations that each are facing.
D	203.43	c	Assessments for eligibility should be conducted at a minimum every 5 years. This should be added to this section.	
D	203.43	c(2)	This paragraph is confusing.	Clarify.
D	203.43	d	Regaining eligibility doesn't take into account the role of the SWIF.	Modify the paragraph to include SWIF.
D	203.47	a	Some of the items within this list are not modifications but rather current engineering practices allowed by policy. This list should be refined to make that clear.	
D	203.47	b(3)	The Corps having sufficient staffing and resources to accommodate the requested modification should not be a criteria. During/after emergency events, Districts are often overwhelmed with "normal" work in addition to emergency repairs. The Corps should utilize it's vast resources nationwide to accomplish this work. In addition, the Corps should leverage non-Federal sponsors and other responsible interests to take on smaller repairs so the Corps resources can be utilized on the more extensive/complicated repairs.	Remove this as a criteria.

D	203.47	c	This requires the non-Federal sponsor request a modification at the same time they are submitting damage sites. This is too soon in the process. In addition, it states that modifications have to be approved by the Corps Director, Contingency Operations & Office of Homeland Security. This could take a substantial amount of time, delaying repairs.	The non-Federal sponsor should be permitted to submit the damage sites and follow up with modification requests within a reasonable time so as not to delay development of the PIR. A specific timeframe should be included for the approval from the Corps Director, CO & OHS. Similar to approval timelines for PIR, this should be an abbreviated approval process. Delegating this further would also be more timely.
D	203.47	e	The cost of the modification shouldn't have to be economically justified if the non-Federal sponsor is responsible for it's total cost.	Modify the sentence to exclude modification cost.
D	203.47	g	The first sentence conflicts with the entire section.	Remove or clarify the statement related to no modifications to improve the condition of the project beyond pre-flood conditions.
D	203.48		This section should be limited to defining the use of inspections for PL 84-99 purposes only. While inspections may be used to determine if PPA commitments are being met, this should be removed from this policy.	Remove the last sentence of this paragraph
	203.5	b	Relating to the SWIF process, the requirements that must be in a Letter Of Intent (LOI) have increased with time transferring things that would be in the SWIF into the LOI. This has significantly increased the time and cost to prepare an LOI and the time it takes for the USACE to review and approve an LOI. This requirement is unnecessarily leaving communities ineligible for PL 84-99 assistance.	We request that USACE simplify the LOI process so that more local agencies can become eligible for PL 84-99 while using the SWIF process to document what must be done over time.
D	203.5	b	There should also be additional time to coordinate complex private property issues such as encroachments.	Add another item to the list for coordinating private property issues.
F	203.71	c(1)	The costs of the NSAP are not required to be economically justified.	Clarify – The Federal amount can't exceed the economically justified amount – meaning that the NFS can contribute more to get the BCR over unity.
J	203.112	f	This section requires Non Federal sponsors make provisions to establish and provide resources for a “Capital Improvement Fund” to meet future costs of capital improvements such as replacement of culverts in levees, pump station equipment, etc.	This is too broad of a requirement. This could require non-Federal sponsors or levee maintaining agencies to have an unlimited fund. The intent of this is to ensure that the facility will have adequate maintenance. This should be evaluated differently.