

**DEPARTMENT OF WATER RESOURCES**

DIVISION OF FLOOD MANAGEMENT  
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HQ, U.S. Army Corps of Engineers  
ATTN: 33CFR203/CECW-HS/3D64  
441 G Street NW  
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RE: Docket Number COE-2015-0004

The California Department of Water Resources (DWR) appreciates the opportunity to review the advance notice of proposed rulemaking (ANPR) issued by the U.S. Army Corps of Engineers (USACE) requesting public comments on potential revisions to 33 CFR part 203 published in the Federal Register on February 13, 2015. As changes are formulated, DWR would greatly appreciate further opportunities to engage with USACE in the process.

By way of background, DWR is the designated state agency for flood response and together with the California Central Valley Flood Protection Board (CVFPB) has responsibility for the operations and maintenance of flood protection infrastructure, including levees, channels and hydraulic structures in the Central Valley. California, through the CVFPB, has provided assurances to the federal government for portions of the flood management system in the Central Valley of California. This system now is part of a complex flood management system that protects urban areas, small towns, and rural areas. DWR inspects and oversees the operations and maintenance of approximately 1,600 miles of levees, 2,600 miles channels, 32 hydraulic structures, 11 pumping plants, and 10 bridges. DWR, along with 86 local agencies, routinely operate and maintain these facilities.

In compliance with the Disaster Preparedness and Flood Prevention Bond Act of 2006 and related California laws, DWR has developed the Central Valley Flood Protection Plan (CVFPP), which was adopted by the CVFPB in 2012. The CVFPP provides a path for improving public safety, environmental stewardship, and long-term economic stability in its management of critical flood risk reduction infrastructure. This effort is continuing with the preparation of the 2017 update of the CVFPP and implementation of its State Systemwide Investment Approach (SSIA). California's thoughtful participation in rethinking and shaping system management and other federal policies will be reflected in the 2017 CVFPP update.

DWR hopes that the following comments will assist with the potential revisions to 33 CFR part 203.

**Comments Regarding Preparedness:**

*Question 1: What (if any) additional types of Advance Measures assistance should be considered?*

**Answer 1: Develop contingency plans for various known levee deficiency types that can be implemented effectively and expeditiously in case of imminent threats of unusual flooding.** Such plans would enable the maintainers to better prepare for flood season and implement preventive measures identified by the plans in a timely fashion that may prevent flooding due to levee failures.

**Consider utilizing evolving forecasting technologies as opposed to reactive flood response actions.** Develop policy that allows utilization of advanced forecast methodologies to trigger implementation of Advance Measures. Additional lead time provided should help prevent levee failures, save lives, and lower property damage from flood events.

**Facilitate consultation under Section 7 of the Endangered Species Act (ESA) with appropriate federal agencies for flood control works maintenance actions that may impact species protected by federal laws.** Having acceptable mitigation measures and take permits would enable maintainers to complete needed maintenance work without delays (often several years).

**Resolve conflicts between federal regulatory requirements, preferably during rulemaking, regarding flood control projects' maintenance.** Timely resolution of conflicting federal requirements between protection of listed species and their habitat under ESA and maintenance of flood control works for public safety under 33CFR section 208.1 would enable timely and adequate maintenance of the facilities. (e.g. Giant Garter Snake protection vs. grouting rodent holes in levees; Western Yellow Billed Cuckoo protection vs. channel maintenance). Timely resolution of conflicting federal requirements would significantly reduce "unacceptable" and "minimally acceptable" inspection ratings, and ultimately save lives and reduce flood damages in an environmentally responsible fashion.

*Question 2: What (if any) additional eligibility or performance requirements should be considered generally for Advance Measures assistance?*

**Answer 2: Consider the condition of flood control works at the time of turnover from USACE to maintainers.** Conditions that existed at the time of turnover of the flood works should not disqualify flood works from eligibility for assistance, even though those conditions potentially could affect performance of works (penetrations through levee, under and through levee seepage; trees and other vegetation on levees and in channels).

**Consider design and construction practices employed for developing the flood control works.** Outdated and/or incomplete design and construction should not disqualify flood works from eligibility. (e.g. lack of geotechnical considerations as well as geomorphic instability; the Sacramento River channel was designed to erode sediment deposition from hydraulic gold mining and features were not included to arrest erosion once the sediment had been flushed out.)

**Consider requirements for protection of listed species and avoidance of potential impacts as required by maintenance standards.** Compliance with ESA and the time-consuming and expensive process set forth under Section 10 of ESA should not disqualify flood control works from eligibility for assistance.

**Consider removing the restriction regarding economic justification for rehabilitation of federal flood control works.** All federal flood control works in the Central Valley satisfied USACE's criteria for favorable benefit-to-cost ratio and have been found economically justified prior to their Congressional authorization. Therefore, the benefit-to-cost ratios for any rehabilitation has been deemed satisfactory, resulting in no need for additional evaluation. As a minimum, develop methodology to address qualitative benefits, system benefits, and life loss prevention.

*Question 3: Would changing the cost share serve as an effective incentive for promotion of the standard USACE planning process? If not, what other incentives or requirements for using the standard USACE planning process for permanent construction should be considered?*

**Answer 3:** Changing the cost share would not serve as an incentive for promotion of the USACE planning process. However, **reliable federal financial participation and expeditious development of feasibility studies, followed by timely Congressional authorization and appropriation for implementing the plans** would be an effective incentive. Also, **reimbursement for the half of the non-federal planning studies costs that essentially mimic the federal process** would be a great incentive. Further, consider allowing State agencies to act on the USACE's behalf as the nexus for Section 7 of ESA as the Department of Transportation allows State transportation departments to act in such capacity.

#### **Comments Regarding Rehabilitation:**

*Question 4: What should USACE evaluate to determine if a non-federal sponsor is adequately operating and maintaining its flood project? What should be considered adequate operation and maintenance?*

**Answer 4:** Consider the diligence and reasonableness of the maintainers' overall efforts (time and expenditures) to plan for maintenance, including working toward complying with environmental regulatory requirements. Since turnover of most flood projects in the Central Valley for operation and maintenance, new regulations have been passed by both federal and State governments. Compliance with those regulations is difficult, if not impossible, time-consuming, expensive, and significantly impacts maintainers' ability to adhere to maintenance standards established by 33 CFR Section 208.1, in a timely fashion. The environmental regulations were developed independently of the maintenance standards without any regard to their impacts on maintainers. Because the maintenance standards have not changed since inception and the USACE has not developed guidance to help maintainers to navigate through today's regulatory maze, adequacy of operation and maintenance should be redefined and criteria for rehabilitation assistance should not be tied to the outdated definition of adequate maintenance.

**Consider long-term performance of the project in times of extraordinary flooding and the risk associated with deviating from maintenance standards.** Some deviations from standards have been in existence since turnover of projects for maintenance to non-federal sponsors and despite the deviations the project has performed adequately.

**Consider the annual expenditures for operating and maintaining the flood projects.** The annual expenditure should not be less than that estimated in the USACE's planning process determining feasibility of the project. Non-federal sponsors agreed to operate and maintain the flood control works based on those federal cost estimates and their revenues from assessments reflected that. Since then assessments have been gradually increased to keep up with the increased maintenance costs. Non-federal sponsors were not originally required to agree to also rehabilitate and reconstruct the turned-over flood control works, and are not in the position to fund activities that require major capital outlay.

*Question 5: How should USACE evaluate a non-federal sponsor's emergency preparedness, notification, evacuation planning and exercise plan and activities to determine if they are adequate? What should USACE evaluate? What should be considered adequate?*

**Answer 5:** Consider evaluating the frequency of participating in flood fight training, exercises using Standardized Emergency Management System (SEMS) and National Incident Management System (NIMS). Also encourage coordination and collaboration through the USACE Silver Jackets Program. Further, consider USACE attendance at pre-flood season coordination meetings, development and continuous improvement of written emergency response and community evacuation plans.

**Consider State laws requiring emergency preparedness.** California Water Code Section 9650 set forth specific requirements that likely would satisfy federal objectives.

*Question 6: How should USACE evaluate a non-federal sponsor's risk communication plan and activities for informing local officials, residents, and business owners about risks associated with potential failure of the flood control project (e.g., a levee breach)?*

**Answer 6: Consider developing eligibility based on formal outreach activities such as workshops, mailers, press releases, reverse 911 calls/text messages, and participation in organized activities as California Flood Preparedness Week.**

*Question 7: Are there other criteria that USACE should consider using to determine eligibility for rehabilitation assistance that would assist and encourage non-federal sponsors and flood-prone communities to reduce their risks from flooding?*

**Answer 7: Consider developing a methodology that broadens the array of benefits to augment traditional Expected Annual Damages (EAD) calculations.** In addition to qualitative environmental benefits, consider potential life loss as well as system performance benefits.

**Consider developing separate design standards and eligibility criteria for urban areas, small towns, and rural areas.**

*Question 8: What improvements to the existing SWIF policy should be made?*

**Answer 8: Consider extending the time limit for retaining eligibility for rehabilitation assistance under P.L. 84-99.** The extension should serve as an incentive to repair facilities to better protect lives and property. The extension should be reasonable, attainable, flexible, and consider the scope of the work needed to prevent future "unacceptable" ratings. Consider setting time limits that are consistent with federal project development time-frame of similar scale and scope of repairs. Consider time required for budgeting, fund appropriation, design, environmental compliance, land acquisition, and construction contracting.

*Question 9: Currently, the SWIF policy has only been used for levee projects. Should the SWIF concept be applied to other types of flood control projects like channels? If so, for what purposes and using what criteria?*

**Answer 9: Consider all flood project features, including channels and structures in SWIF policy.** Segregating portions/facilities of a flood project from the SWIF creates a highly difficult situation for non-federal sponsors, as facilities of flood control projects cannot be operated separately; they operate as a single system for safe conveyance of flood flows.

**Consider development of *Risk-based Inspection Reports* and use of *O&M Resources*: Moving away from a strict condition-based assessment is a move in the right direction.** Maintainers currently prioritize maintenance activities based on risk and will continue to do so. This methodology is consistent with the State's methodology laid out in the CVFPP which calls for system wide prioritization of investments to the highest risk areas and projects which provide the greatest benefits. The current USACE SWIF process asks maintainers to prioritize inspection results based on risk, however, the expense of preparing a SWIF takes valuable resources away from on-the-ground maintenance work. Risk-based inspection reports could help in reducing the effort and expense currently placed on maintainers in this regard.

*Question 10: If the eligibility for rehabilitation assistance moves away from a standard-based inspection criteria and moves toward an activities-based approach (as is considered in Section B.1 above), what role should the SWIF policy play? Under what circumstances would development of a SWIF be useful to non-federal sponsors?*

**Answer 10: SWIF policy provides an incentive for non-federal sponsors to repair flood control works while retaining eligibility for rehabilitation assistance seeking federal ESA compliance.** This incentive may assist in securing funds through the budgeting process for repairs.

**SWIF policy creates a Section 7 nexus through the USACE for consultation under ESA, which is an immense benefit to non-federal sponsors.** Without the SWIF, non-federal sponsors do not have a federal agency action to create a nexus, and compliance with ESA is limited to Section 10, Habitat Conservation Plans (HCP) creation. HCPs take many years to develop and are very costly. It serves not only the non-federal, but the federal interest as well, to provide federal assistance for complying with federal regulations, such as ESA. This federal assistance would enable the non-federal sponsors to preserve the intended federal benefit of projects developed with federal funds.

*Question 11: Are there other types of features and approaches that USACE should allow during rehabilitation efforts to minimize or address impacts on threatened and endangered species and tribal treaty rights while still providing the intended benefits of the flood control projects and reducing the risk of loss of life and significant economic damages?*

**Answer 11: Consider approaches that are complementary and do not compromise public safety.** In addressing impacts to listed species, consider approaches from a flood works maintenance perspective too. Maintenance has to be doable and affordable without mitigation for impacts on listed species. Each alternative approach should be evaluated with the maintainers' input.

The SSIA sets forth a strategy to improve public safety, ecosystem conditions, and economic sustainability, while understanding the financial challenges of meeting these objectives. California's SSIA will prioritize flood projects that are multi-benefit projects, and will look to the USACE to shift from single purpose projects to multi-purpose projects.

**Consider providing ESA coverage for ongoing/long-term operations and maintenance activities for the repaired works following their rehabilitation.** Consider that the improved habitat and flood system could promote recovery of listed species. Consider providing "mitigation credit" for use for other flood management activities, such as operations and maintenance that may affect those listed species in other areas of the flood system.

**Consider acting in a leadership role to help develop a new paradigm for improving and managing public infrastructure for broad public benefits such as public safety environmental stewardship and economic stability.** In many cases, the current Operations and Maintenance Manuals issued by the USACE generally consider public safety, and the USACE is requiring without compromise that these manuals be followed. Since the manuals were created, new federal and California environmental regulations (Endangered Species Act, California Endangered Species Act, and the California Fish and Game Code 1602 Lake and Streambed Alteration Agreement requirement) have been created that non-federal sponsor must comply with. The USACE should assist with resolving conflicting governmental expectations associated with managing flood facilities for a broad array of public benefits.

*Question 12: What advance planning activities could USACE undertake with non-federal interests to enable non-federal interests to consider NSAPs as viable alternatives to structural rehabilitation efforts if the project is damaged in a future flood event?*

**Answer 12: Consider pre-flood evaluation of structural elevation.** If a levee system only protects a few structures, analyzing the “buyout” cost or elevation/floodproofing cost of the structure may assist in evaluating the feasibility of NSAPs. Some structures are not structurally sound enough for elevation. In general, NSAP is not feasible in deep floodplains, in shallow floodplains cost sharing of the total cost, including land acquisitions and relocations would be very helpful.

**Develop streamlined procedure de-authorizing federal facilities in situations where continue OMRR&R of project facilities are no longer justifiable.**

*Question 13: How can the current NSAP policy be improved?*

**Answer 13: No comment.**

Thank you for the opportunity to comment and for your consideration of our comments for Rulemaking Docket Number COE-2015-0004. DWR stands ready to assist making changes to 33 CFR part 203. If you have any questions regarding this matter, you may contact my lead flood management planner, Michael Mierzwa at (916) 879 -2383, or Michael.Mierzwa@water.ca.gov.

Sincerely,



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