

CENTRAL VALLEY FLOOD PROTECTION BOARD

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April 14, 2015

HQ, U.S. Army Corps of Engineers
ATTN: 33CFR203/CECW-HS/3D64
441 G Street NW
Washington, DC 20314-1000

RE: Docket Number COE-2015-0004

Dear Mr. Jeffrey D. Jensen:

The attached comments have been prepared by the California Central Valley Flood Protection Board (CVFPB) in collaboration with Local Maintaining Agency (LMA) partners. The CVFPB is a statutory agency of the State of California and the non-federal sponsor for the 1,600 miles of federally authorized levees in the Central Valley known as the State Plan of Flood Control (SPFC). The CVFPB is governed by a Board consisting of seven governor-appointed and California senate-confirmed members, plus two non-voting ex-officio members from the California legislature. Monthly board meetings provide an open forum where all interests may express their views regarding flood management. The CVFPB also issues encroachment permits, oversees levee improvement projects and adjudicates enforcement actions over the SPFC. The CVFPB's mission is to reduce the risk of catastrophic flooding to people and property within the California Central Valley.

California's Central Valley is unique in that although the CVFPB provided assurances on behalf of the State to the federal government for operation and maintenance of the "system", the actual levee maintenance and operations are performed by more than 80 LMAs pursuant to a number of Agreements with the State. Many LMAs operate in sparsely populated agricultural areas, and all LMAs are subject to the severe constraints of several California initiatives, which make raising funds difficult and expensive.

Within the SPFC, the United States Army Corps of Engineers (USACE) has divided the 1,600 miles of levees into 116 hydraulically separable systems. As of the date of this letter, 83 of the 116 systems (72%) are currently **inactive** in the USACE's Public Law (PL) 84-99 Rehabilitation Program (RP). Another six systems have been deemed inactive; however, those six systems have approved Letters of Intent (LOI) to develop System Wide Improvement Framework (SWIF) plans. The majority of the inactive systems were deemed inactive by the USACE through its latest round of periodic and routine inspections. Inspection results have not been issued for all 116 systems and it is expected that more systems will become inactive once all final reports are issued. It is a top priority for the CVFPB to manage the State's potential risk for catastrophic flooding. The CVFPB is very concerned that over 70% of the SPFC levee systems are currently inactive for federal PL 84-99 rehabilitation assistance as this situation has greatly increased potential risk and costs to the State, the LMAs and ultimately the citizens of California.

As you may know, the State of California has been diligently pursuing increased flood protection for its citizens as exemplified by the Proposition 1E, Disaster Preparedness and Flood Prevention Bond Act of 2006, which included over \$4 billion for flood management activities. Also, the Central Valley Flood Protection Act of 2008 required the Department of Water Resources (DWR) to develop and the CVFPB to adopt a comprehensive plan for managing flood risk in the Central Valley. The Central Valley Flood Protection Plan (CVFPP), was adopted by CVFPB in 2012, and provides a long-term and sustainable path for improving public safety, environmental stewardship, and economic stability in its management of this critical infrastructure. This effort is continuing with the 2017 update of the CVFPP and implementation of its State System-wide Investment Approach.

The CVFPB appreciates this opportunity to provide input on the potential changes to federal policies related to disaster preparedness and rehabilitation assistance for flood control works. Specific responses to the questions posed by the USACE are attached to this letter. In addition, the CVFPB is prepared to remain engaged with USACE throughout this process and appreciates any further opportunities for engagement with the USACE.

If you have any questions or if we can provide any further assistance to the USACE, please contact Mr. Michael Wright, Chief of Enforcement Section, Central Valley Flood Protection Board at Michael.Wright@water.ca.gov or (916) 574-0698.

Sincerely,

A handwritten signature in blue ink that reads "L. Gallagher" with a stylized flourish at the end.

Leslie Gallagher
Acting Executive Officer

Attachment: CVFPB / LMA Comments for Docket Number COE-2015-0004

ANPR 2015-03033, Section IV. Questions and Issues to Shape the Revision of 33 CFR Part 203.

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

- Question 1 refers to the current eligibility criteria listed in 33 CFR 203.72 which does not specifically state whether a system is required to be active in Public Law (PL) 84-99. This comment requests clarification on whether a system is required to be eligible in PL 84-99 to receive Advance Measures.
- 33 CFR 203.72 (d) states that the work must have a favorable benefit-to-cost ratio under Corps of Engineers (Corps) economic guidelines to be eligible for Advance Measures. The Corps provides no guidance as to how to determine a “favorable” benefit-to-cost ratio. It would be of great assistance to the non-federal sponsor if the Corps would publish benefit-to-cost ratios for the 116 levee systems that are currently within the State of California’s responsibilities or make available a methodology to enable the non-federal sponsors to calculate benefit-to-cost ratios acceptable to USACE. This would serve as guidance for Advance Measures requests by the non-federal sponsor prior to any catastrophic flooding event.

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

- Given the imminent threats to public safety that are involved when Advance Measures are needed, eligibility requirements for USACE assistance with Advance Measures should not change to become more stringent. If a levee system is enrolled in the PL 84-99 program, it should be eligible to receive Advance Measures assistance. Making this assistance more exclusionary would only increase the risk to public safety.
- Advance Measures should be available if a levee system is enrolled in PL 84-99 regardless if the system is currently active in PL 84-99. Inactive systems should also have access to Corps Advance Measures.
- Levee systems which do not have favorable benefit-to-cost ratios should be identified and notified if they are not eligible for Advance Measure assistance so that local sponsors can make other arrangements for funding before a disaster occurs.

USACE 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?

- Incentives (or penalties) relative to the USACE planning process should not be incorporated into the PL 84-99 program. Rather, the USACE planning program should be examined separately to identify why sponsors hesitate to participate, and fix those problems with the planning process.
- There should be consideration for a zero cost-share program for financially-challenged local maintaining agencies whose levee systems are damaged as a result of flood disaster.

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

- For PL 84-99 eligibility assessment, the evaluation of adequate O&M activities should be centered on risks to life safety and property damage. O&M issues that would not result in the catastrophic breaching of the levee system should be considered more tolerable and should be put into a category of risks that the responsible stakeholders keep under review, but should not prevent the system from being eligible for PL 84-99 assistance. Further, maintenance activities delayed by State, Federal, or Tribal permitting issues should not prevent eligibility.
- Any O&M activity that is required for PL 84-99 eligibility should have an associated effort that is proportionate to the subsequent life safety risk reduction it would achieve.
- Currently minimally acceptable inspection points become a serious deficiency after two years. Minimally acceptable inspection points should be re-evaluated after two years to determine if they have become a more serious threat. If they have not, they should not be an issue that forces a system to become inactive.
- Currently rural levee systems are inspected and rated using the same criteria that are used for urban levee systems. The non-federal sponsors suggest Corps develop separate inspection criteria for urban and rural levee systems. In general, the risks associated with rural levee systems are far less than the risks associated with urban levee systems. The varying risk should be considered when developing inspection criteria. The risk assessment should be correlated to the associated benefit-to-cost ratios.
- Corps should also consider local conditions when evaluating a levee systems operation and maintenance. Inspection criteria could be tailored to adequately incorporate environmental, geographical, historical, hydrologic and demographic circumstances.

USACE 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?*

- A flood safety plan on file and approved by the State or other government agency should be considered adequate for the purposes of PL 84-99 eligibility. Critical components to be evaluated for a flood safety plan include:
 - A levee patrol plan for high water situations
 - A flood preparedness plan that includes storage of materials to be used for reinforcing or protecting a levee when a risk of failure exists

- A flood-fight plan for the period before State or federal agencies assume control over the flood fight
- An evacuation plan that includes a system for adequately warning the general public in the event of a levee failure, and a plan for the evacuation of every affected school, residential care facility for the elderly, and long-term health care facility
- A floodwater removal plan
- Report on annual exercises
- Financial resources available to cover the flood safety plan with consideration of USACE assistance

Typically, the above items are the responsibility of the local Office of Emergency Services (OES) and it would be the LMA's role to coordinate with OES.

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

No comment

USACE 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?*

No Comment

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

Key components of the SWIF plan should mirror key components of PL 84-99 eligibility. As PL 84-99 eligibility requirements move towards an activities-based approach, the SWIF can be used to confirm that PL 84-99 eligibility requirements are met. Before embarking on development of a SWIF, a local levee maintaining agency should be knowledgeable of the benefit-to-cost ratios and whether or not the SWIF will enable USACE PL84-99 Rehabilitation assistance funding. It makes no sense to prepare a SWIF if benefit-to-cost ratios are inadequate to obtain rehabilitation assistance unless the USACE has Advance Measures available for levee systems with lower benefit-to-cost ratios.

The SWIF plan should shift its focus towards presenting:

- An acceptable emergency preparedness plan

- An acceptable risk communication plan
- A risk-prioritized list of maintenance activities aimed to correct the most critical unacceptable items defined in the USACE periodic inspection report

The SWIF should only focus on prioritizing repairs of the most critical unacceptable items and on developing a plan to deal with the time consuming issues that fall outside of standard O&M activities (eg- encroachment remediation). A plan for remediation of minor O&M issues that are of low or tolerable risks (eg- vegetation) should not be the focus of a SWIF plan.

USACE 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?*

The SWIF policy could be expanded to include channel maintenance because a rehabilitated channel would result in lower water surface elevations, reducing surcharge on levees.

USACE Question 10: *If the eligibility for rehabilitation assistance moves away from a standards-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?*

See response to Question 8.

USACE 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?*

No Comment

USACE 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?*

Provide planning assistance for levee relief cut structures or strategic action plans.

However, in nearly all cases, land use and people have come to rely on the protection afforded by the levee project. Not rehabilitating a damaged project essentially constitutes inverse condemnation which is very problematic for sponsors.

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

No Comment