

Meeting of the Central Valley Flood Protection Board
June 26, 2015
Staff Report
Amendment #2 to the Design Agreement and Local Design Agreement
American River Watershed – Natomas Basin Project

REQUEST FOR BOARD ACTION

Approval of Resolution No. 2015-09 to:

1. Approve Design Agreement Amendment #2 with the U.S. Army Corps of Engineers (USACE) and the Sacramento Area Flood Control Agency (SAFCA) for the American River Watershed – Natomas Basin Project to increase total project cost; and
2. Approve the Local Design Agreement Amendment #2 with SAFCA for the American River Watershed – Natomas Basin Project to reflect the changes to the Design Agreement; and
3. Delegate to the Board President the authority to sign the Amendments.

Amendment #2 to the Design Agreement with USACE and SAFCA will increase the scope of design and the funds available for design from a total design cost of \$2,576,920 to \$3,846,150. The increased cost will be used to award task orders to continue design of Reach I and H, and to award the construction contract of Reach I by 2016. The corollary Amendment #2 to the Local Design Agreement acknowledges the Design Agreement Amendment #2 and clarifies the cost increases of the Design Agreement. The State share will be increased from \$631,346 to \$942,308. The local share will be increased from \$270,577 to \$403,846.

Only a small portion of the overall Project design will be funded under the amended design agreement to leverage the additional \$3,500,000 in federal funding recently allocated for the Project from the 2016 President's Budget. Without a State/local cost share, the additional federal funding cannot be used for the Project, potentially delaying construction of the much needed improvements.

BACKGROUND

Since 2007, the Department of Water Resources (DWR) and SAFCA have been improving levees in the Natomas Basin based on an urgent need to improve the levees' performance

capability and to return them to their previous certified status. The Natomas community has been at great risk of levee failure due to serious seepage and stability concerns for nearly 15 years. Once implemented, this Project will help to alleviate the concern of flooding in the basin due to levee failure.

DWR and SAFCA have contributed approximately \$400,000,000 toward about 40% of the levee improvements needed in the basin prior to, and in anticipation of a federally sponsored project. USACE and SAFCA estimate the unfinished design and construction work in the basin to cost over \$600,000,000. The funding relationship between the NLIP-EIP and Federal Natomas Basin Projects is illustrated in Figure 1-0. In March 2014, USACE provided its first design funds toward the Project. SAFCA entered into the Design Agreement in May 2014, and provided cost-share funds in June 2014 to initiate those design efforts. Also in May 2014, the CVFPB entered into a Local Design Agreement with SAFCA to cost-share on the Project, yet was not a direct non-federal sponsor with USACE.

In June 2014, the Water Resources Reform and Development Act (WRRDA) authorized the Project with a total project cost of approximately \$1,147,280,000. The scope of the federal authorization includes design and construction of improvements around the entire basin.

In FY 2015, an additional \$675,000 in federal funding was appropriated to USACE as part of the President's budget and required a non-federal cost-share. Amendment #1 to the Design Agreement incorporated the additional federal funding into the Project, and expanded the scope of work allowing for additional civil and geotechnical design to be accomplished on the Project. Amendment #1 increased the scope of design and the funds available for design from a total design cost of \$1,538,000 to \$2,576,920. The State share was increased from \$376,923 to \$631,346. The local share was increased from \$161,538 to \$270,577.

The remaining flood control improvements needed to protect the Natomas Basin are primarily on the southern and eastern boundaries of the basin, but include unfinished work along the Sacramento River and Natomas Cross Canal.

SPONSORS

In May 2014, SAFCA agreed to be the signatory on the Design Agreement with USACE for expediency of payment to USACE. This is unusual, as CVFPB traditionally has been the non-federal signatory on Design Agreements with USACE. SAFCA and CVFPB executed a Local Design Agreement in May 2014 to allow CVFPB to cost-share in the Project. By the proposed amendments, CVFPB will enter into the Design Agreement as a non-federal sponsor for the Project. After execution of an agreement for construction of the full set of

improvements, work already accomplished by DWR and SAFCA will be credited, and applied toward the non-federal cost-share for the Project.

COSTS

Funds to be added via the Design Agreement Amendment #2 will be \$1,269,230 and will be shared 65% federal (\$825,000), and 35% non-federal (\$444,230), bringing the total Design Agreement funding to \$3,846,165. The non-federal share of Amendment #2 is further divided into 70% CVFPB (\$310,961) and 30% SAFCA (\$133,269) as defined in the Local Design Agreement.

The State cost-share will be paid from existing Proposition 1E Bond funds, and will be subsumed into the overall Project when the project cooperation agreement (PCA) is negotiated with USACE within the next year. Project authority, funding, and funding sources for the NLIP-EIP and the Federal Natomas Basin Project are shown in Table 1 and Table 2, respectively.

Table 1: Authorities and Funding Sources for the NLIP-EIP Project

	Authority	Funding	Source
SAFCA	Board Approvals State Funding Agreements	\$ 120 M	Assessment Districts
State	CA Water Code 12670.14	\$ 280 M	Proposition 1E
	Total	\$ 400 M	

Table 2: Authorities and Funding Sources for the Federal Natomas Basin Project

	Authority	Funding	Source
SAFCA	Design Agreement, Local Design Agreement	\$0.40 M	Asst. District
	Credit via Future PCA	(EIP Credit) \$ 120 M	USACE
State	CA Water Code 8615	\$ 0.63 M	Prop. 1E
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USACE	Flood Control Act of 1962 (American River Watershed)	\$1 M	Federal Budgeting
	Water Resources Development Act of 1996 and 1999 (ARCF)	\$ 0.675 M	
	Water Resources Reform and Development Act of 2014 (Natomas Basin)	\$ 745 M	
	Total Federal Project Costs*	\$ 1,147.7 M	

* Total Federal Project Costs as authorized by WRRDA 2014

PUBLIC INVOLVEMENT

Public involvement has been occurring on the DWR and SAFCA portion of the Natomas levee work since 2006. Many public outreach meetings, environmental scoping meetings, and environmental document comment periods have occurred in the last 8 years in the

community. Looking forward, an updated environmental document will be prepared in mid-2015 for review by the public for levee improvement designs along Garden Highway (Reach I) at the American River.

STAFF RECOMMENDATION

Staff recommends that CVFPB approve Resolution No. 2019-09 to approve the Amendments to the Design Agreement and Local Design Agreement with USACE and SAFCA for the Project; and to delegate to the CVFPB President the authority to sign the Amendments. These amendments will allow USACE to complete design efforts on an additional six miles of levee improvements, making them “shovel ready” as soon as federal construction funding becomes available.

LIST OF ATTACHMENTS

- A. Proposed Design Agreement Amendment #2
- B. Proposed Local Design Agreement Amendment #2
- C. Proposed Resolution 2015-09

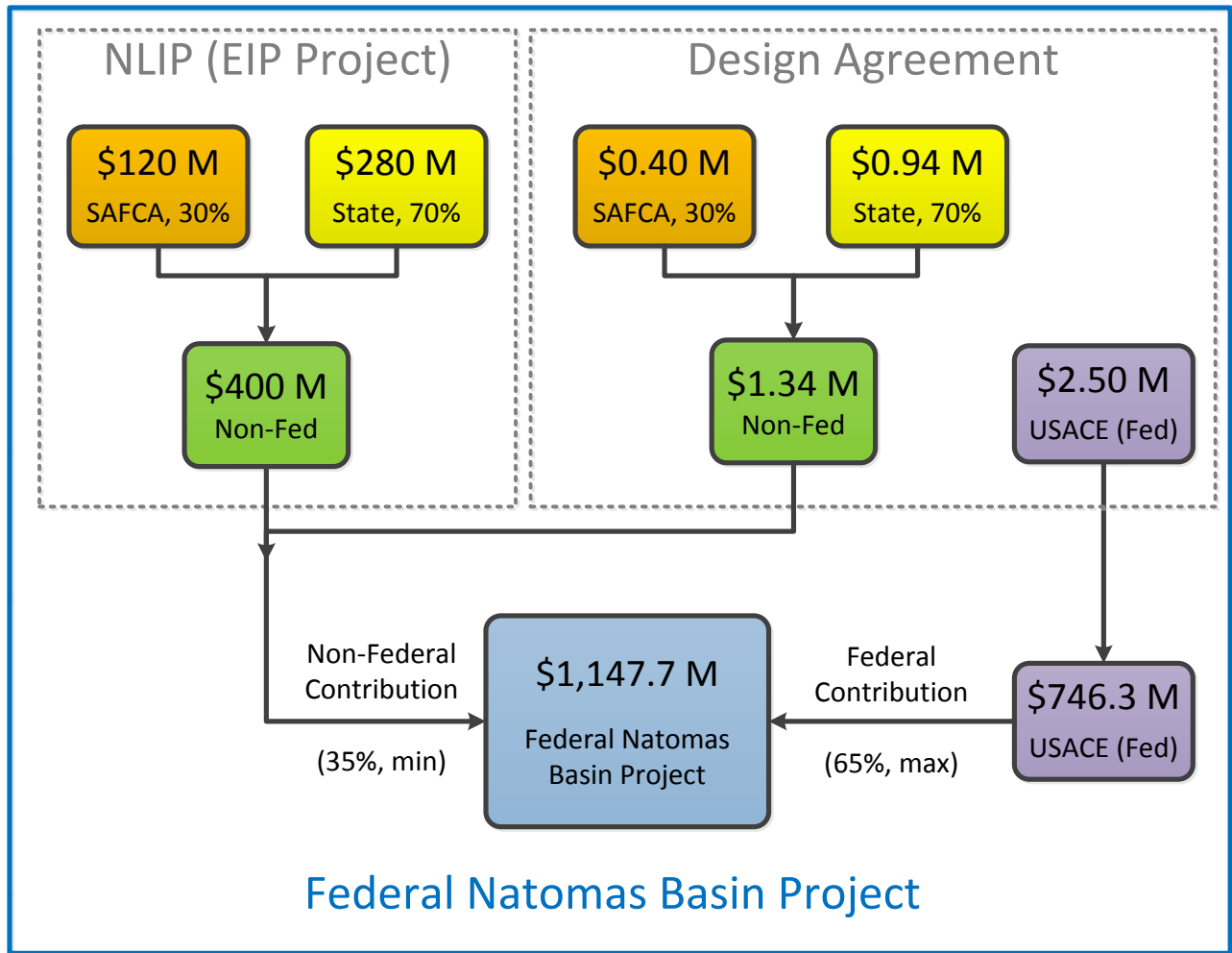


Figure 1-0: Approximate Funding Relationship between the NLIP-EIP Project and the Federal Natomas Basin Project

AMENDMENT NUMBER 2
TO THE
DESIGN AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY,
THE SACRAMENTO AREA FLOOD CONTROL AGENCY,
AND
THE CALIFORNIA CENTRAL VALLEY FLOOD PROTECTION BOARD
FOR
DESIGN
FOR THE
AMERICAN RIVER WATERSHED PROJECT -
NATOMAS BASIN

THIS AMENDMENT is entered into this _____ day of _____, _____, by and between the Department of the Army (hereinafter the “Government”), represented by the U.S. Army Engineer, Sacramento District, and the Sacramento Area Flood Control Agency, a joint powers authority established pursuant to the laws of the State of California, and the State of California’s Central Valley Flood Protection Board (hereinafter referred to collectively as the “Non-Federal Sponsors”).

WITNESSETH, THAT:

WHEREAS, the Government and the Non-Federal Sponsor (represented by the Sacramento Area Flood Control Agency) entered into the agreement titled “Design Agreement between the Department of the Army and the Sacramento Area Flood Control Agency for Design for the American River Watershed Project – Natomas Basin (hereinafter the “Agreement”) on May 19, 2014 for the provision of design for the Natomas Basin (hereinafter the “*Project*”, as defined in Article I.A. of the Agreement);

WHEREAS, the Government and the Non-Federal Sponsor entered into Amendment Number 1 to the Agreement on December 17, 2014 to add the State of California’s Central Valley Flood Protection Board as a joint Non-Federal Sponsor and to update the project cost to \$2,576,920;

WHEREAS, Federal General Investigations funds for Fiscal Year 2015 include funds for the Government to continue design of the American River Watershed Project at the Natomas Basin levees in Sacramento and Sutter Counties, California;

WHEREAS, construction or implementation of the *Project* is authorized by Congress in Section 209 of the 1962 Flood Control Act (Pub. L. No. 87-874), Section 101 of the Water Resources Development Act (WRDA) of 1996 (Pub. L. No. 104-303, § 101(a)(1), 110 Stat. 3658, 3662-3663 (1996)), as amended by Section 366 of WRDA 1999 (Pub. L. No. 106-53, § 366, 113 Stat. 269, 319-320 (1999)), the Energy and Water Development Act of 2004 (Pub. L. No. 108-137, § 129, 121 Stat. 1844, 1947 (2003)), and

the Water Resources Reform and Development Act of 2014 (Pub. L. No. 113-121, § 7002, 128 Stat. 1193, 1366 (2014));

WHEREAS, the Government and the Non-Federal Sponsors desire to amend this agreement to increase the total design costs;

NOW, THEREFORE, the Government and the Non-Federal Sponsors agree that the Agreement is hereby amended in the following particulars but in no others:

1. ARTICLE II, A.5. is hereby revised to replace "\$1,675,000" with "\$2,500,000" and to replace "\$1,675,000" with "\$2,500,000."
2. ARTICLE IV, A.1. is hereby revised to replace "\$2,576,920" with "\$3,846,150," to replace "\$108,200" with "\$161,540," and to replace "\$793,720" with "\$1,184,610".

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Engineer.

DEPARTMENT OF THE ARMY

SACRAMENTO AREA FLOOD CONTROL AGENCY

BY: _____
Colonel Michael Farrell
District Engineer
Sacramento District

BY: _____
Richard M. Johnson
Executive Director
Sacramento Area Flood Control Agency

DATE: _____

DATE: _____

THE STATE OF CALIFORNIA'S
CENTRAL VALLEY FLOOD
PROTECTION BOARD

BY: _____
William Edgar
Executive Officer, Central Valley Flood Protection Board

CERTIFICATE OF AUTHORITY

I, M. Holly Gilchrist, do hereby certify that I am the principal legal officer of the Sacramento Area Flood Control Agency, a joint powers authority established pursuant to the laws of the State of California, that the Sacramento Area Flood Control Agency is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the Sacramento Area Flood Control Agency in connection with design of the levee system surrounding the Natomas Basin, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement and that the persons who have executed this Agreement on behalf of the Sacramento Area Flood Control Agency have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this _____ day of _____ 20__.

M. Holly Gilchrist
Agency Counsel
Sacramento Area Flood Control Agency

CERTIFICATE OF AUTHORITY

I, Robin Brewer, do hereby certify that I am the principal legal officer of The State of California's Central Valley Flood Protection Board for this project, that the State of California's Central Valley Flood Protection Board is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the State of California's Central Valley Flood Protection Board in connection with design of the levee system surrounding the Natomas Basin, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement and that the persons who have executed this Agreement on behalf of the State of California's Central Valley Flood Protection Board have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this _____ day of _____ 20__.

Robin Brewer
Assistant Chief Counsel, Office of the Chief Counsel,
California Department of Water Resources

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Richard M. Johnson
Executive Director
Sacramento Area Flood Control Agency

DATE: _____

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William Edgar
Executive Officer
Central Valley Flood Protection Board

DATE: _____

AMENDMENT NUMBER 2
TO THE
LOCAL DESIGN AGREEMENT
BETWEEN
THE SACRAMENTO AREA FLOOD CONTROL AGENCY
AND
THE CENTRAL VALLEY FLOOD PROTECTION BOARD
FOR DESIGN OF THE
AMERICAN RIVER WATERSHED PROJECT -
NATOMAS BASIN

THIS AMENDMENT is entered into this _____ day of _____, 2015, by and between the Sacramento Area Flood Control Agency, a joint powers authority established pursuant to the laws of the State of California and The State of California, acting through the Central Valley Flood Protection Board (hereinafter the Board).

RECITALS:

WHEREAS, the Department of the Army, represented by the U.S. Army Corps of Engineers (hereinafter the Government) received Federal General Investigations funds for Fiscal Year 2014 for the Government to initiate design of the American River Watershed Project at the Natomas Basin levees in Sacramento and Sutter Counties, California; and

WHEREAS, the Sacramento Area Flood Control Agency (SAFCA) entered into a Design Agreement titled “Design Agreement Between The Department of the Army and the Sacramento Area Flood Control Agency for Design for the American River Watershed Project – Natomas Basin” for the provision of design for the Natomas Basin (an element of the Parent Project and hereinafter the *Project*, as defined in Article I.A. of that Agreement); and

WHEREAS, construction or implementation of the *Project* is authorized by Congress in Section 209 of the 1962 Flood Control Act (Pub. L. No. 87-874), Section 101 of the Water Resources Development Act (WRDA) of 1996 (Pub. L. No. 104-303, § 101(a)(1), 110 Stat. 3658, 3662-3663 (1996)), as amended by Section 366 of WRDA 1999 (Pub. L. No. 106-53, § 366, 113 Stat. 269, 319-320 (1999)), the Energy and Water Development Act of 2004 (Pub. L. No. 108-137, § 129, 121 Stat. 1844, 1947 (2003)), and the Water Resources Reform and Development Act of 2014 (Pub. L. No. 113-121, § 7002, 128 Stat. 1193, 1366 (2014)); and

WHEREAS, SAFCA, the Board, and the Government executed Amendment Number 1 to the Design Agreement to allow additional Federal and Non-Federal funds to be available for the Project; and

WHEREAS, SAFCA, the Board, and the Government desire to amend the Design Agreement to add \$825,000 of Federal funds to be available for the Project; and

WHEREAS, the Non Federal Sponsors' obligations are set forth in the document titled AMENDMENT NUMBER 2 TO THE DESIGN AGREEMENT BETWEEN THE DEPARTMENT OF THE ARMY, THE SACRAMENTO AREA FLOOD CONTROL AGENCY, AND THE CALIFORNIA CENTRAL VALLEY FLOOD PROTECTION BOARD FOR DESIGN FOR THE AMERICAN RIVER WATERSHED PROJECT - NATOMAS BASIN ("Design Agreement Amendment 2"), a draft of which is attached hereto as Exhibit A and incorporated herein by this reference thereto; and

WHEREAS, the Board and SAFCA desire to further specify their respective contributions and the Non Federal Sponsors during the term of the *Project* with this Amendment #2 to the Local Design Agreement.

NOW, THEREFORE, SAFCA and the Board agree that the Agreement is hereby amended in the following particulars, but in no others, as follows:

1. Section IV – Method of Payment, Paragraph A: replace the text “...SAFCA’s share of the *total design costs* are projected to be \$161,538, and the Board’s required contribution of the *total design costs* are projected to be \$376,923” with the text “SAFCA’s share of the *total design costs* are projected to be \$403,846, and the Board’s required contribution of the *total design costs* are projected to be \$942,308”

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement, as of the day and year first above written.

SACRAMENTO AREA FLOOD CONTROL AGENCY

Approved as to legal form and sufficiency:

BY: _____
Richard M. Johnson
Executive Director

BY: _____
M. Holly Gilchrist, Counsel

DATE: _____

DATE: _____

CENTRAL VALLEY FLOOD PROTECTION BOARD OF THE STATE OF CALIFORNIA

Approved as to legal form and sufficiency:

BY: _____
William Edgar, President

BY: _____
Robin Brewer, Counsel

DATE: _____

DATE: _____

CERTIFICATE OF AUTHORITY

I, Robin Brewer, do hereby certify that I am the principal legal officer of The State of California's Central Valley Flood Protection Board for this project, that the State of California's Central Valley Flood Protection Board is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the State of California's Central Valley Flood Protection Board in connection with design of the levee system surrounding the Natomas Basin, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement and that the persons who have executed this Agreement on behalf of the State of California's Central Valley Flood Protection Board have acted within their statutory authority.

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Assistant Chief Council, Office of the Chief Counsel,
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* Total Federal Project Costs as authorized by WRRDA 2014

PUBLIC INVOLVEMENT

Public involvement has been occurring on the DWR and SAFCA portion of the Natomas levee work since 2006. Many public outreach meetings, environmental scoping meetings, and environmental document comment periods have occurred in the last 8 years in the

community. Looking forward, an updated environmental document will be prepared in mid-2015 for review by the public for levee improvement designs along Garden Highway (Reach I) at the American River.

STAFF RECOMMENDATION

Staff recommends that CVFPB approve Resolution No. 2019-09 to approve the Amendments to the Design Agreement and Local Design Agreement with USACE and SAFCA for the Project; and to delegate to the CVFPB President the authority to sign the Amendments. These amendments will allow USACE to complete design efforts on an additional six miles of levee improvements, making them “shovel ready” as soon as federal construction funding becomes available.

LIST OF ATTACHMENTS

- A. Proposed Design Agreement Amendment #2
- B. Proposed Local Design Agreement Amendment #2
- C. Proposed Resolution 2015-09

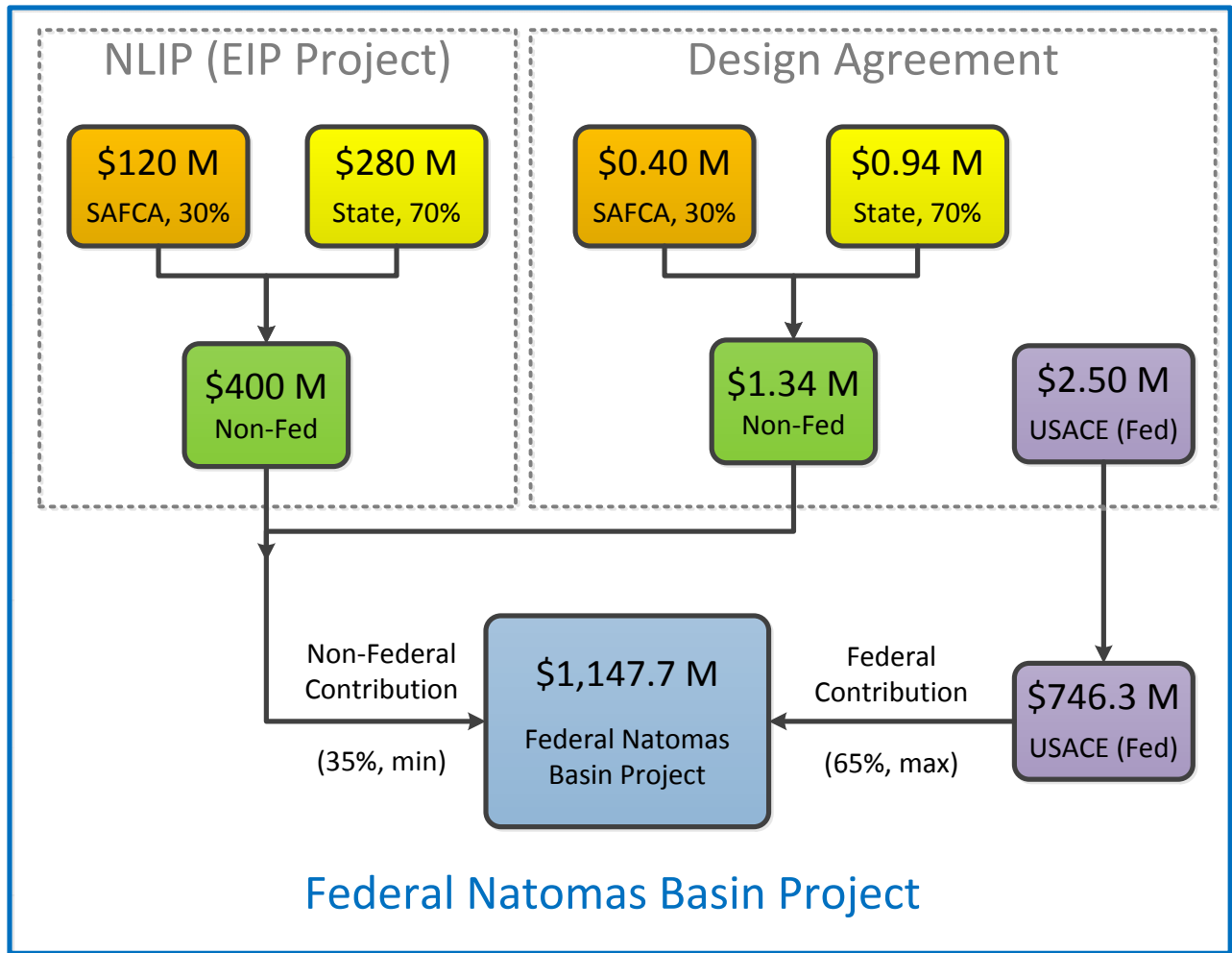


Figure 1-0: Approximate Funding Relationship between the NLIP-EIP Project and the Federal Natomas Basin Project