

**Joint Report to the Legislature**

**The Central Valley Flood Protection Board**  
**Long-Term Funding Plan**

The Central Valley Flood Protection Board  
and  
The Department of Water Resources

Submitted pursuant to  
Supplemental Language in Item 3860-001-6052 of the 2015-16 Budget Bill

## **INTRODUCTION**

The Supplemental Report of the 2015-2016 Budget Act, Item 3860-001-6052, asked the Central Valley Flood Protection Board (“the CVFPB”) and the Department of Water Resources (“DWR”) to jointly provide a report to the budget committees of both houses that identifies a long-term funding strategy for the CVFPB that does not include one-time or bond funding to support the CVFPB’s State operations. It also asked that this report be developed with stakeholder input.

The CVFPB and DWR have been working toward preparing and implementing the Central Valley Flood Protection Plan (CVFPP) which will be updated in 2017. In this regard, a significant element of the 2017 amendments to the adopted CVFPP will be the refinement of the “State Systemwide Investment Approach,” or the financial plan. This financial plan will propose the specific funding sources that will underwrite the costs of implementing the CVFPP including planning, improvements, rehabilitation, operation, maintenance, inspections, and enforcement of the officially designated State Plan of Flood Control (SPFC). The financial plan will also identify the costs of implementing the CVFPP over time. This report was prepared and jointly submitted to be consistent with the updated Plan’s framework.

## **CVFPB HISTORY**

In the latter part of the 1800s, great efforts were made by landowners to reclaim the flood and overflow lands in the Sacramento Valley. The levees constructed by these landowners failed about two years out of five. After the storms of 1907 and 1909, the federal Corps of Engineers developed a comprehensive plan for flood control, consisting of a system of levees and bypasses. The project was approved by Congress and the State. A smaller, less protective project was later approved for the San Joaquin River. Levees in the State-federal system in the Central Valley are called “project” levees and are facilities within the SPFC.

The CVFPB was created by the California Legislature in 1911 and is the regulatory body responsible for management of encroachments into the SPFC. It also manages all of the properties owned by the Sacramento San Joaquin Drainage District (SSJDD) and serves as the liaison between the State of California, its residents, property owners, Central Valley agencies, and the United States government, and works to ensure that the public receives the highest level of flood protection possible, while also considering environmental and habitat concerns.

The Board is the official state “partner” to the United State Army Corps of Engineers for federal flood control projects in the Central Valley, although flood projects program staff is currently housed under DWR. Modifications to the levees and bypasses and works between the levees must be approved by both partners. Local maintaining agencies (LMAs) operate and maintain most of the levees. DWR maintains levees where there is no LMA or where statute specifies that DWR is to maintain the levee.

In the Paterno lawsuit brought against the State and other defendants that resulted from the failure of a project levee on the Yuba River in a 1986 flood, the California Court of Appeal ruled

in 2003 that the State was responsible for the damage that occurred when the levee failed. The cost to the State was approximately \$500 million.

The Legislature responded to the Paterno Decision in these ways:

- (1) Renaming the CVFPB and reconstituting its authorities as independent of DWR (SB 17, 2007)
- (2) Directing DWR to prepare a Central Valley Flood Protection Plan, with the plan to be amended/approved by the CVFPB in 2012 and updated every five years thereafter (AB 5, 2007)
- (3) Specifying that levees protecting large urban areas must meet 200-year flood protection if the affected city or county wishes to continue developing after 2025
- (4) Requiring that local land use public policy suggest the danger of development in the floodplain by 1) requiring amendments to cities and counties' general plans showing the locations of flood hazards and mapping by July 2, 2015 in preparation for a determination of the "Urban Level of Flood Protection (ULOP)," 2) requiring city and county zoning ordinance consistency to the general plan amendments by July 2, 2016 (or one year after the general plan amendment is adopted), and 3) requiring certain areas within specific locations to make findings for ULOP in order to proceed with certain land use actions by July 2, 2016, and
- (5) Providing substantial bond funding, following voter approval, for levee improvements in the Central Valley.

## **CURRENT CVFPB FUNCTIONS AND STAFFING LEVELS**

The CVFPB has a staff consisting of engineers, environmental scientists and support personnel. The entire staff is dedicated to six core functions:

- (1) Providing the critical open public forum for stakeholders interested in flood control programs throughout the Central Valley;
- (2) Managing encroachments (pipes, transmission lines, docks, etc.) under, through, on, over, or between the SPFC facilities, including levees with the objective of assuring that these encroachments do not impair the flood protection function;
- (3) Carrying out enforcement proceedings against unpermitted encroachments or those with permits that are out of compliance with permit conditions;
- (4) Overseeing and assisting the LMAs charged with maintaining and operating the SPFC;
- (5) Sponsoring and Approving flood system improvement projects, and;
- (6) Amending/approving and overseeing the implementation of the Central Valley Flood Protection Plan prepared by DWR.

The CVFPB has no planning staff, right of way agents, levee inspectors, construction crews, budget analysts, or policy advisors. The CVFPB relies on staffing housed within DWR to

provide support functions for each of the above programs pursuant to a 2008 Memorandum of Agreement (MOA).

DWR carries out some of the CVFPB’s functions and receives funding from both the CVFPB’s budget and its own budget appropriations for flood management related activities as follows:

- (1) Large scale State/federal project management;
- (2) Small scale levee repairs through various grant programs;
- (3) Real property/lease management;
- (4) SPFC encroachment removal services;
- (5) Delta Subventions program management;
- (6) Levee inspection and reporting to the CVFPB;
- (7) Acts as the “building inspector” for levee improvements and encroachments approved by the CVFPB;
- (8) Maintains channel capacity in the Sacramento River System, and ;
- (9) Maintains and operates certain levees and bypasses.

In the current enacted Governor’s budget, the CVFPB has 45.7 authorized positions, but that total is a combination of actual positions and full-time equivalent (FTE) positions for dollar amounts of authorized funding that the CVFPB is charged for costs such as DWR management and line staff overhead, and resource agreements for the outsourced CVFPB functions. The total number of authorized positions directly working for or charging the CVFPB through resource agreements is 35. There is a dollar amount of authorized funding equivalent to about 9 FTEs to support the indirect and overhead costs which are charged to the CVFPB’s budget. Finally, the CVFPB has eight vacant full-time positions, five of which are as yet unfilled following an approved 2015 budget change proposal. The CVFPB is in the process of identifying the most critical functions to its operation and filling those positions to operate most effectively and efficiently in the future.

**SUMMARY OF CVFPB HISTORICAL POSTION DETAIL**

**Authorized and Filled Positions**

	<b>Actual 2012-2013</b>	<b>Actual 2013-2014</b>	<b>Estimated 2014-2015</b>	<b>Budget 2015-2016</b>
Approved Per CA Adopted Budget	34.5	33.0	34.5	45.7

**CVFPB/DWR Organizational Chart:**

Filled Per Organizational Chart	33.0	33.5	30.0	23.0
Vacant Per Organizational Chart	0.0	0.0	2.0	8.0
<b>Total Per CVFPB/DWR Organizational Chart</b>	<b>33.0</b>	<b>33.5</b>	<b>32.0</b>	<b>31.0</b>

## CVFPB BUDGET

Since 2008 the CVFPB has been funded from a combination of sources split between General Fund appropriations and Proposition 1E Bond appropriations.

In addition, in fiscal year 2012-13 the CVFPB was provided with up to \$8 million of reimbursable authority to fund environmental analyses for projects of local or State agencies. These funds are a direct pass-through from these agencies to the contract consultants who actually perform the work and do not fund any of the CVFPB's operations.

The CVFPB's budget for fiscal year 2015-2016 is \$17 million:

- (1) \$5.2 million from the General Fund
- (2) \$3.8 million from Proposition 1E Bond funds
- (3) \$8 million in reimbursable authority to allow the CVFPB to accept external funding to pay for the outside consulting cost of preparing Environmental Impact Reports (EIRs) which are overseen by the CVFPB staff for certain projects.

### SUMMARY OF CVFPB HISTORICAL BUDGET/EXPENDITURE DETAIL

#### Approved Budget and Related Expenditures

	Actual 2012-2013	Actual 2013-2014	Estimated 2014-2015	Budget 2015-2016
<b>Approved CA Budget Per Fund:</b>				
General Fund	\$4,001,267	\$4,185,840	\$4,389,760	\$5,193,000
Bond Fund	920,793	1,606,000	1,606,000	3,812,000
Sub-Total - Budget	\$4,922,060	\$5,791,840	\$5,995,760	\$9,005,000
Reimbursable	8,000,000	8,000,285	8,000,807	8,001,000
<b>Grand Total - Budget</b>	<b>\$12,922,060</b>	<b>\$13,792,125</b>	<b>\$13,996,567</b>	<b>\$17,006,000</b>
<b>Expenditures Per Fund:</b>				
General Fund	\$3,972,611	\$3,675,673	\$4,230,089	\$5,193,000
Bond Fund	760,483	1,279,167	\$1,084,477	3,812,000
Sub-Total - Expenditures	\$4,733,094	\$4,954,840	\$5,314,566	\$9,005,000
Reimbursable	8,000,000	8,000,000	8,001,000	8,001,000
<b>Grand Total - Expenditures<sup>1</sup></b>	<b>\$12,733,094</b>	<b>\$12,954,840</b>	<b>\$13,315,566</b>	<b>\$17,006,000</b>
<b>Variance - Budget in Excess of Expenditures:</b>	<b>\$188,966</b>	<b>\$837,285</b>	<b>\$681,001</b>	<b>\$0</b>

1. Reimbursable displayed as a pass through; No actual expenditures were incurred

## **REVENUE AUTHORITY**

### Permits

The CVFPB manages the SPFC facilities through a comprehensive permitting and enforcement program. CVFPB staff receive encroachment permit applications from outside entities to allow for the construction of encroachments on or through areas protected by SPFC facilities. The CVFPB has no explicit statutory authority to charge fees for encroachments permits or to charge fees for the periodic inspections of those encroachments. However, the CVFPB regulations do require a permit holder to pay a reasonable inspection fee during construction, which could help defray some of the costs of inspections. It is important to point out that these charges would not compensate the CVFPB for its staff time required for processing the applications, and due to the fact that all of the inspectors are currently housed in DWR, any fees associated with inspections would likely be funneled back to DWR.

For permit processing, it is important to note that there is substantial work and time involved researching the specific issues, gathering information, and meeting with the property owners and their consultant representatives, and interacting with the USACE, State and federal resource agencies, and LMAs in order to issue a permit with effective and enforceable conditions. In addition, the background information and the record of each individual case must be fully documented in case the matter proceeds to a hearing or the court. As with most “code enforcement” programs the extraordinary staff time and cost that is required for proper permitting and enforcement is never fully recovered.

Three years ago the CVFPB requested approval through legislation for greater enforcement authority for unpermitted or out-of-compliance encroachments and for the authority to charge fees on permits. The flood community supported the encroachment legislation but requested that the permit fee portion be delayed so that there could be more conversation with stakeholders. The unpermitted or out-of-compliance encroachment authority was approved and signed by the Governor in SB 753 (Steinberg, 2013). The CVFPB modified its regulations in 2014 to be consistent with the new legislation and implemented a successful pilot program in 2015 extending the authority to issue notices of violation to three Sacramento LMAs. Also in 2014, the CVFPB revived the permit fee discussion and has been gathering data to quantify the staff hours required to issue, inspect and maintain levee encroachment permits.<sup>1</sup>

The numbers of issued permits for both encroachments and levee improvement projects are shown in the table below.

<b>Average Number of Permits Per Year, 2011 to 2014</b>	
JPAs	9
State agencies	18
Cities and Counties	18
Utilities	16

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<sup>1</sup> An issue with implementation of inspection fees would be whether to make the levy prospective on new permits and not seek recovery for the costs associated with the estimated 21,000 existing permits that have been issued by the CVFPB over the prior century

LMA's	8
Private Organizations	34
Private Citizens	24
TOTAL	128

Leases

The CVFPB owns lands in the Central Valley, primarily in the bypasses, that are leased for farming, natural gas extraction, or other purposes. Under Water Code Division 5, Sections 8655-8679, the CVFPB has authority to enter into agreements to lease its property and to collect lease and royalty revenues. DWR collects the lease and royalty revenues on behalf of the CVFPB and deposits those revenues into the General Fund as required by current statute.

The amount of lease revenue is highly variable and largely dependent on commodity prices and the economy. Given the economic and market-sensitive nature of production, reliability and forecasting of these revenues can be challenging. In recent years this revenue has varied in amounts from \$360,000 to \$1.5 million, with an average of about \$880,000, highlighted in the table below. Lease revenues are not currently shown in the CVFPB's budget as a revenue source.

Lease and Royalty Revenue (\$thousand's)									
	Actual	Actual	Actual	Actual	Actual	Actual	Actual	Forecast	
	2008-2009	2009-2010	2010-2011	2011-2012	2012-2013	2013-2014	2014-2015	2015-2016	
Lease Revenue	\$ 836	\$ 202	\$ 154	\$ 90	\$ 227	\$ 401	\$ 1,646	\$ 508	
Royalty Revenue	688	658	384	269	187	211	191	370	
<b>Total</b>	<b>\$ 1,524</b>	<b>\$ 860</b>	<b>\$ 538</b>	<b>\$ 359</b>	<b>\$ 413</b>	<b>\$ 612</b>	<b>\$ 1,837</b>	<b>\$ 877</b>	

Assessments

The CVFPB, through the Sacramento-San Joaquin Drainage District (SSJDD), has old statutory authority to establish an assessment district to pay for capital outlay improvements to the flood system. Under that existing authority, property may only be assessed for capital outlay, with no authority to levy for ongoing operations and maintenance (O&M). In order to meet the existing funding deficiencies for critical operations and maintenance, greater clarity regarding both purpose of the assessment, and the geographic area benefitted would be necessary.

There are a number of ways the CVFPB could structure the assessment to meet these standards such as assessing property owners based on factors, including, but not limited to assessed property values, acreage of land owned, the depth of flooding avoided by the improvements made to the system, and proximity to maintained project facilities. Structuring assessments such that higher benefactors of mitigated flood risk are charged a larger proportionate share of the cost to maintain the system of flood control may be more equitable and more favorable to some stakeholders.

The costs of establishing an assessment district and funding additional CVFPB functions to collect an assessment over roughly 1.7 million acres in 14 counties would likely be much larger than the CVFPB's current budget. A thorough cost-benefit analysis with stakeholder input would be necessary before the establishment of an assessment district.

## **FLOOD PROTECTION FINANCING PROGRAMS UNDERWAY**

There are a number of programs being carried out by State agencies relative to flood control funding in the Central Valley, including the Delta:

- (1) The 2017 update of the Central Valley Flood Protection Plan is to be presented by DWR to the CVFPB by the end of 2016 and is to be approved by the CVFPB by June 30, 2017. The 2017 update is expected to include a financing plan on how to fund both the capital outlay and operating costs of the flood control system.
- (2) The Delta Stewardship Council, in cooperation with the CVFPB, is preparing a "Delta Levee Investment Strategy," as required by SB 5 for levees located within the legal Delta, both project and non-project levees. About one-third of Delta levees are project levees.
- (3) The Delta Protection Commission is evaluating the feasibility of creating an assessment district within the Delta to pay for as yet unspecified flood control costs. The assessment district concept was recommended by the Delta Stewardship Council and later included in the Governor's Water Action Plan. DWR has provided the funding to the Delta Protection Commission for this evaluation.
- (4) For the past decade financial support for flood management activities of the State have been funded through general obligation bonds (most notably Propositions 84 and 1E included nearly \$4.9 billion for flood protection since 2006) and through the General Fund. In November 2014, the voters of the State approved Proposition 1, the Water Quality, Supply and Infrastructure Improvement Act of 2014 that includes an additional \$395 million for flood protection projects and activities, with \$295 million dedicated to reducing the risk of levee failure in the Sacramento-San Joaquin Delta. Specific existing programs include the Delta Levee Maintenance Subventions Program and the Delta Special Projects Program, the statewide Flood Control Subventions Program, as well as urban, non-urban, and flood control system programs that address flood risk in the Central Valley pursuant to the CVFPP.



## **ANALYSIS AND DISCUSSION**

Given the above history, background, as well as the current staffing of the CVFPB, the following summarizes our conclusions and recommendations:

1. The estimated capital cost and ongoing cost of Operations, Maintenance, Repair, Replacement, and Rehabilitation (OMRRR) is extremely high. In the adopted 2012 CVFPP the estimated capital cost of improving the flood control system was between \$14 and \$17 billion. DWR has estimated that the existing expenditures for OMRRR is about \$23 million each year, while the need is estimated to be about \$83 million.
2. Given the potential liability to the State, capital and ongoing investment will be required immediately and over time pursuant to a comprehensive financing and implementation plan.
3. The State's responsibility and cost for implementing flood risk reduction measures within California's Central Valley falls on many agencies, including the CVFPB, DWR, the Delta Stewardship Council, the Delta Protection Commission, the Delta Conservancy, and the Water Commission. The CVFPB has re-started the discussions tabled in the 2013 legislation regarding charging fees for the staff time to review, issue and manage permits and begun tracking costs for that effort.
4. The CVFPB, after compiling cost data and receiving input from stakeholders, will be addressing the issue of permit fees, but it should be understood that this is expected to result in minor revenues.
5. The issue of how the State will address the large capital and on-going cost of improving and maintaining the flood control system will be set forth in a "Financial Plan" that will be included in the 2017 proposed amendments to the 2012 CVFPP. The cost alternatives will be considered in a comprehensive framework broader than a single entity or agency.
6. While all of the comprehensive financing plans are being developed by DWR as part of the proposed amendments to the adopted CVFPP, and while other efforts are proceeding such as the preparation of the Delta Stewardship Council's levee investment strategy and the Delta Protection Commission's assessment financing strategy report, it is critical to continue the General Fund support of the CVFPB in order for the Board to carry out its statutory responsibilities of reducing flood risk for people and property in California's Central Valley.