

**Central Valley Flood Protection Board Meeting
June 24, 2016**

**INFORMATIONAL BRIEFING – Early Implementation Program Acquired Rights
Transfer to Sacramento-San Joaquin Drainage District**

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BRIEFING SUMMARY

Background

The Department of Water Resources (DWR) implemented the Early Implementation Program (EIP) as part of the 2006 voter approved Propositions 84 and 1E. The program's unprecedented funding allowed DWR to move ahead of the lengthy U.S. Army Corps of Engineers' (USACE) process and to implement critical repair and improvements in urban areas on State Plan of Flood Control (SPFC) facilities.

The title to State land rights under and around the SPFC levees is held by the Sacramento-San Joaquin Drainage District (SSJDD), acting by and through the Central Valley Flood Protection Board (Board) of the State of California, and comes in many forms. In some cases, DWR found that SSJDD had insufficient or no real property rights (rights) under the SPFC levees. In other cases where appropriate rights existed, the landowner had encroached into SSJDD's rights. As part of this program, DWR endeavored to clean up the majority of the rights issues in segments where DWR was funding repairs or improvements to the facility. DWR developed EIP Guidelines and policies that included acquisition of a minimum 20-foot Operation and Maintenance (O&M) corridor from the landside toe of SPFC levees (the California Code of Regulations, Title 23, Division 1 regulations require a minimum 10-foot setback). EIP Guidelines were subsequently memorialized in DWR's Urban Levee Design Criteria (ULDC) in 2012. Both the EIP Guidelines and ULDC went through public comment processes before being finalized by DWR.

EIP Guidelines and Policies

EIP Guidelines and procedures required a minimum width of 20 feet in fee from the landside toe of the levee for a landside maintenance corridor, and all real property rights under the SPFC levee to be held in fee. DWR allowed up to 50 feet for a maintenance corridor where the funding recipient and Local Maintaining Agency (LMA) were interested and had the ability to acquire inexpensive land that they could maintain. In most cases, waterside rights were less of a concern; however, in areas where agricultural properties were present on the waterside, only 15 feet was acquired. Rights were acquired in fee for two main reasons; previously acquired easements were found to be insufficient in some cases; and an exclusive permanent restrictive flood easement can cost up to 95% of the fee value. Thus, acquiring fee title became a more cost effective alternative.

Efforts were made to implement these guidelines throughout the project areas; however, the system has many existing encroachments, permitted and unpermitted, which hindered this effort. EIP Guidelines and funding agreements allowed for exceptions to these guidelines when acquiring the required rights was financially

infeasible, or if it would have a significant public implication that could have stopped an essential flood improvement. In these cases, DWR required the funding recipient to seek the appropriate permit(s) from the Board for all unpermitted encroachments. DWR also asked for a specific parcel-by-parcel exception request from the funding recipient. If DWR did not approve the exception(s), the funding recipient would not be reimbursed for that portion of their real estate acquisition costs as part of the funding agreement.

Exceptions included changing the type of acquisition from fee to a permanent easement, or reducing the width or size of the acquisition. In all cases, DWR sought to box in the encroachment so it could not further expand. This was accomplished by requiring the acquired rights to only be reduced in the immediate vicinity of the structure or feature needing the exception. This would allow the State to have the required rights for the rest of the property adjacent to the SPFC facility.

In most cases, DWR required that the funding recipient prepare a plan that would have a clear funding source to cleanup all exceptions over time. This could result in buying the property, at such time as it comes to market, and subsequently removing the structure. This would allow appropriate and sufficient rights to be conveyed to SSJDD at that time. The rest of the property outside of the required rights could then be disposed of by the local jurisdiction. Because the local property owners would not agree to such a cloud on the title to their respective properties due to the negative impact to the property value, this plan cannot be implemented by recording a document on the property's deed. Therefore, the State would have to shift responsibility by requiring the LMA to report progress in their mandated annual report. Alternatively, the requirement could be put on the funding recipient, which in most cases is a Joint Power Authority that may dissolve after the project is completed.

Not all acquisitions of real property rights will be conveyed to SSJDD. Property rights that were acquired to relocate utilities or transportation facilities outside of the levee maintenance corridor will be conveyed to the utility, transportation agency, or the LMA with an easement for utility or transportation purposes. In most cases, the utility or transportation owner would relinquish their existing real property rights for their current easement in the flood or levee maintenance corridor.

DWR also recently started requiring survey monumentation for all rights acquired by State funded projects. This requirement is being implemented by clearly identifying the acquired rights both on the surface, and to a depth of 2-3 feet in case the surface monument is damaged or destroyed. The monumentation plan, such as a Record of Survey, will be recorded at the appropriate County Recorder's office.

Current EIP Real Estate Process

1. After the initial EIP Guidelines and every update thereafter, a Proposal Solicitation Package (PSP) was issued for identifying projects through a competitive process. Almost all EIP and UFRR projects were selected through this process.
2. Subsequently, funding agreements were executed that included extensive requirements for real estate acquisition.
3. One such requirement was that a Real Estate Plan be approved in advance of any payment for real estate acquisition. This plan was to identify all potential

acquisitions, both permanent and temporary, utility and transportation relocations, exceptions to 20 feet in fee required, and monumentation of State right, which was added later under UFRR Guidelines.

4. Real Estate Acquisitions were done either through willing sellers or by eminent domain procedures. The State was not involved in the funding recipient's negotiations, and only reviewed the final acquisition for compliance with State laws, policies, and procedures. The State allows the flexibility to exceed the appraised value for rights, if a determination is made that it would still be less expensive than the eminent domain process through the approved Administrative Settlement Process. However, when all options have been exhausted and negotiations reach an impasse, the State will support the use of eminent domain to acquire the necessary rights.
5. In some instances a location may exist where, due to existing conditions, the funding recipient is unable to obtain the required 20 feet in fee. If such exception is identified, funding recipients were to provide parcel-by-parcel detail for DWR's evaluation and approval. Generally, DWR requested a long-term plan to comply with the 20 feet minimum in fee. The long-term plan needed to include a showing of financial capability to carry out acquisition of the 20 feet minimum over time.
6. In general, funding recipients are moving well ahead of DWR and acquiring rights and starting construction activities before submitting their Real Estate Plan. This leaves DWR to evaluate their acquisitions after the fact to identify rights needed for project purposes (mitigation, borrow, etc.), O&M, relocation of utilities and transportation facilities, or other purposes. This evaluation is to decide not only what property would be transferred to SSJDD, but also what acquisition is an eligible project cost to be cost shared under the terms of the funding agreement.
7. Once DWR determines what rights will be transferred to the State, the funding recipient has to negotiate with the LMA, utilities, etc. as to who will have what kind of rights and have it understood that those rights will be subordinate to those of SSJDD. All rights that the State will eventually own must meet both legal and geodetic requirements prior to transfer. Property must have an unclouded title and a correct boundary description. Funding recipients start this process once the boundary of such property has been agreed upon. Once all State real estate requirements have been satisfied, the rights are transferred from the funding recipient to SSJDD. This transfer occurs before the final payment for the rights acquired are released by the State.

Next Steps

As DWR progresses to close these projects, better real property rights will be gained for SPFC facilities, which should continue to improve over time as the funding recipients resolve the exceptions in their long-term plans. However, prior to closing projects, the acquired rights need to be conveyed and accepted by SSJDD. DWR believes the delegation provided to DWR in the CVFPB-DWR 2008 Memorandum of Agreement allows, and DWR proposes, for such transfers to be made without a specific Board resolution for each property or project. If, however, the Board would like to be involved in decisions at any point during the EIP real estate process discussed above leading to property transfers to the SSJDD, DWR will work with Board staff to identify at what point, and to what level, the Board is involved.