

**STATE OF CALIFORNIA
THE NATURAL RESOURCES AGENCY
CENTRAL VALLEY FLOOD PROTECTION BOARD
RESOLUTION NO. 2018-06 FOR
ACCEPTABLE OPERATION AND MAINTENANCE OF THE
STATE PLAN OF FLOOD CONTROL**

BACKGROUND:

- A. WHEREAS**, in 1911 the Legislature created the Reclamation Board. The Reclamation Board was given regulatory authority over the Sacramento Valley's local levee maintaining agencies with the objectives of (1) assuring a logical, integrated system for controlling flooding along the Sacramento and San Joaquin Rivers and their tributaries in cooperation with the United States Army Corps of Engineers (USACE), (2) cooperating with various agencies in planning, constructing, operating, and maintaining flood control works, and (3) maintaining the integrity of the flood control system and designated floodways. In 1913 the Reclamation Board was given regulatory authority over the San Joaquin Valley's local levee maintaining agencies. In 2007 the Legislature restructured the Reclamation Board and renamed it as the "Central Valley Flood Protection Board"; and
- B. WHEREAS**, as the non-federal sponsor of the State-federal flood control system in California's Central Valley, the Central Valley Flood Protection Board (Board) has provided the federal government with assurances that the flood control system would be operated and maintained as prescribed by regulations of the Secretary of the Army that require compliance with the USACE in the Standard Operation and Maintenance manuals for the Sacramento River Flood Control Project (1955) and for the Lower San Joaquin River Levees – Lower San Joaquin River and Tributaries Project (1959) pursuant to the authority in California Water Code Section 8617; and
- C. WHEREAS**, as required by California Water Code 12642 and 12828, local maintaining partners provided assurances to the Board for continued operation and maintenance, as prescribed by regulations of the Secretary of the Army, for the flood control system in the Central Valley; and
- D. WHEREAS**, in 2005, Hurricane Katrina caused portions of the federal levee system to fail in New Orleans, resulting in significant loss of life and property and subsequently, the USACE embarked upon a nationwide scrutiny of the federal levee system; and
- E. WHEREAS**, After Hurricane Katrina, the people of California recognized the Sacramento-San Joaquin Valley as an area significantly at risk for similar devastation suffered by New Orleans and passed Proposition 1E, which provided \$4 billion for flood protection for the Central Valley, which has been utilized over the past 11 years to significantly improve the State Plan of Flood Control (SPFC) facilities in the Central Valley; and

- F. WHEREAS**, the Central Valley Flood Protection Act of 2008 (2008 Act) directed that the Department of Water Resources (DWR) prepare a Central Valley Flood Protection Plan (CVFPP) to be adopted by the Board by July 1, 2012 (CWC § 9612(b)); and
- G. WHEREAS**, the 2008 Act directs that the CVFPP be updated in subsequent years ending in two (2) and seven (7) (CWC § 9612(e)); and
- H. WHEREAS**, DWR prepared a 2017 update to the CVFPP pursuant to the requirements of the 2008 Act. The 2017 update was adopted by the Board through Resolution of Adoption 2017-10 on August 25, 2017; and
- I. WHEREAS**, despite significant investment in SPFC facilities, the current state of the SPFC levees as documented by the USACE's Periodic Inspection Reports, is severely inadequate, as over 90% of the SPFC levees received unacceptable inspection ratings; and
- J. WHEREAS**, following the 2017 winter storms, approximately \$400 million of damage to SPFC facilities has been deemed ineligible for federal Public Law 84-99 Rehabilitation Assistance by the USACE, thereby resulting in a missed opportunity to secure approximately \$400 million of federal rehabilitation funding; and
- K. WHEREAS**, through Resolution of Adoption 2017-10, the Board stated the following:
- i. That in order to successfully implement the 2017 CVFPP Update, essential and adequate funding is necessary to continue to operate and maintain the flood system, that additional funding is required to correct identified deferred maintenance issues, and that further funding is essential to continue to make vital improvements to California's aging flood system.
 - ii. That since the adoption of the 2012 CVFPP, the levee inspection reports provided by the USACE indicate severe levee maintenance deficiencies in over 90% of State Plan of Flood Control levee systems.
 - iii. That it is committed to working with the local maintaining agencies to correct these operation and maintenance deficiencies in order to obtain or regain eligibility for the Public Law 84-99 Rehabilitation Program.
 - iv. That it acknowledges the importance of all eight key policy issues identified in the 2017 CVFPP Update and will facilitate resolution of these interrelated policy issues with the understanding that the Board has identified funding and operation and maintenance of the flood system as the highest priorities to advance prior to the 2022 CVFPP Update.
- L. WHEREAS**, through multiple successful Coordinating Committee meetings, the Board has facilitated a discussion regarding the definitions of operation, maintenance, repair, replacement, and rehabilitation (OMRR&R), including valuable participation by the USACE, local maintaining agencies, and stakeholders.

NOW, THEREFORE, BE IT RESOLVED, THAT THE BOARD FINDS:

1. That the above recitals are true and correct.
2. That all SPFC facilities are required to be operated and maintained in accordance with federal regulations and with operation and maintenance manuals (O&M manuals) resulting in acceptable USACE inspection ratings.
3. That many local maintaining agencies have advised the State that lack of sustainable funding is a major hurdle to adequately operate and maintain SPFC facilities.
4. That identifying and securing a sustainable funding source for local operation and maintenance of the SPFC is a State priority.
5. That the Board and Department are committed to working with the local maintaining agencies to correct operation and maintenance OMRRR deficiencies that will reduce risk to the people and property of the Central Valley, and obtain or regain eligibility for the federal Public Law 84-99 Rehabilitation Program.
6. That the Board and Department acknowledge the value of local maintaining agencies developing, submitting, and adhering to System Wide Improvement Framework plans as an initial phase to regain eligibility for the federal Public Law 84-99 Rehabilitation Program.
7. That as an interim phase of compliance with the requirements of the federal regulations and O&M manuals, the State's objective is to require local maintaining agencies to address the unacceptable items identified in the USACE inspection reports that fall within the subset of items described in the USACE memorandum dated March 21, 2014 with subject line "Interim Policy for Determining Eligibility Status of Flood Risk Management Projects for the Rehabilitation Program Pursuant to Public Law (P.L.) 84-99".
8. That the State's priority and long-term goal requires local maintaining agencies to substantially improve operation and maintenance practices to reach compliance with all requirements of applicable federal regulations and operation and maintenance manuals ensuring eligibility for the federal Public Law 84-99 Rehabilitation Program under current federal interim guidelines. The only acceptable deviation to the State pertains to the State's levee vegetation objectives that require local maintaining agencies to comply with the State's current levee vegetation management strategy, which differs from federal requirements.
9. The Board will seek to update its assurances agreements with local maintaining agencies to reflect current federal law with regard to operation and maintenance obligations in a manner that explicitly recognizes operation and maintenance requirements relating to repair, rehabilitation, and replacement pursuant to the Water Resources Development Act of 1986 (Pub. L. 99-662) and Title 33, Section 208.10 of the Code of Federal Regulations.

**NOW, THEREFORE, BE IT RESOLVED, THAT THE BOARD ESTABLISHES
THE FOLLOWING POLICIES:**

- I. It is unacceptable for local maintaining agencies to consistently fail annual Department inspections.
- II. Local maintaining agencies shall make every effort to achieve an “acceptable” rating in future Department inspections.
- III. It is unacceptable for local maintaining agencies to remain inactive for the federal Public Law 84-99 Rehabilitation Program.
- IV. Local maintaining agencies shall make every effort to gain or regain eligibility for the federal Public Law 84-99 Rehabilitation Program, including participating in the federal System Wide Improvement Framework program as an initial phase while working toward an interim phase of compliance by addressing the unacceptable items within the USACE’s subset of items described in the USACE’s interim policy.
- V. Local maintaining agencies shall make every effort to comply with the State’s long-term requirement of full compliance with federal regulations and operation and maintenance manuals.
- VI. The State finds that the obligation to perform routine operation and maintenance did not expand with the Water Resources Development Act of 1986 language.
- VII. The State finds that the term “repair, replacement, and rehabilitation” does not include reconstruction of a project or project segment that has reached the end of its design service life or is deficient due to a design or construction defect.
- VIII. OMRR&R requirements for local maintaining agencies shall be consistent with federal requirements, and operation and maintenance manuals.
- IX. Local maintaining agencies that are unable to meet OMRR&R requirements shall seek necessary local funding to comply with OMRR&R requirements, and participate in the federal System Wide Improvement Framework program.
- X. The State will pursue remedies available to it, including a local assessment and / or formation of State maintenance areas, in areas where local maintaining agencies are unable or unwilling to fund proper operation and maintenance practices in compliance with the federal regulations and operation and maintenance manuals.:

This resolution shall constitute the written decision of the Board in the matter of acceptable operation and maintenance of the State Plan of Flood Control.

PASSED AND ADOPTED by vote of the Board on Month XX, 2018

William H. Edgar, President

Jane Dolan, Secretary