

**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 (O&M) 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**, the legislature granted the Board jurisdiction and authority over the State Plan of Flood Control (SPFC) as denoted in California Water Code, including Section 8534, which requires the Board to enforce on behalf of the State the erection, maintenance and protection of the SPFC which in its judgment will best serve the interests of the State and Section 8608 which requires the Board to establish and enforce standards for the operations and maintenance of the SPFC.
- D. 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
- E. 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

- F. 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 SPFC facilities in the Central Valley; and
- G. 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
- 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**, 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.
- J. 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, and

NOW, THEREFORE THE BOARD FINDS:

1. That the above recitals are true and correct.
2. That this Resolution 2018-06 is being adopted by the Board as confirmation of the State's standards for operation and maintenance for SPFC facilities and is intended to notify all interested parties that the Board will enforce its standards as necessary to fulfill its mandates pursuant to California Water Code.
3. That all SPFC facilities are required to be operated and maintained in accordance with the Code of Federal Regulations, Title 33, Section 208.10 (33 CFR 208.10) and with federal O&M manuals resulting in acceptable USACE inspection ratings.
4. 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 O&M 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.
5. That the obligation to perform routine operation and maintenance did not expand with the Water Resources Development Act of 1986 language.
6. 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.
7. 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.
8. That identifying and securing a sustainable funding source for local operation and maintenance of the SPFC is a State priority.
9. That the State is committed to working with the local maintaining agencies to correct operation and maintenance deficiencies that will reduce risk to the people and property of the Central Valley, and obtain, regain, and maintain eligibility for the federal Public Law 84-99 Rehabilitation Program.
10. That the State acknowledges the value of local maintaining agencies and applauds those agencies which received acceptable ratings. The State appreciates those local maintaining agencies that have developed and submitted System Wide Improvement Framework (SWIFs) plans.
11. That the State encourages all other local maintaining agencies currently not meeting federal Public Law 84-99 Rehabilitation Program eligibility criteria to develop, submit, and adhere to SWIFs as an initial phase to regain eligibility for the federal Public Law 84-99 Rehabilitation Program. As an interim phase of compliance with the requirements

of 33 CFR 208.10 and federal O&M manuals, the local maintaining agencies may 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”.

12. The Board will seek to update its assurance agreements with local maintaining agencies 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 33 CFR 208.10.

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

- I. Local maintaining agencies who have not received acceptable ratings from recent Department inspections, shall make every effort to receive “acceptable” ratings from annual Department inspections.
- II. 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 SWIF 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.
- III. Local maintaining agencies shall make every effort to comply with the State’s long-term requirement of full compliance with 33 CFR 208.10 and federal O&M manuals.
- IV. Local maintaining agencies that are unable to meet OMRR&R requirements shall seek necessary funding to comply with OMRR&R requirements or participate in the federal SWIF program.
- V. The State is committed to improving operation and maintenance practices in all areas where the State is required to perform such work, including pursuing eligibility in the federal PL 84-99 SWIF program as an initial action to regain eligibility for federal rehabilitation assistance.
- VI. The State will investigate all remedies available to it as authorized by California Water Code, in areas where local maintaining agencies are unable or unwilling to fund proper operation and maintenance practices in compliance with 33 CFR 208.10 and federal O&M 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

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