

HISTORY OF OMRR&R OBLIGATIONS: A LOCAL PERSPECTIVE

Coordinating Committee
January 24, 2018

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FEDERAL INVOLVEMENT COMES TO THE VALLEY

- Most levees in our valley were locally built.
- Following later authorization, USACE came in to help implement improvements for navigation and flood protection.
- But USACE did not want to deal with multiple sponsors = Reclamation Board.
- In 1953 the Corps turned over the completed Sacramento River project to the State, not the locals, for O&M.
- (Later for San Joaquin.)



FEDERAL CONDITIONS FOR FEDERAL PARTICIPATION

- 33 USC section 701c provides:
 - After June 22, 1936, no money appropriated under authority of section 701f of this title shall be expended on the construction of any project until States, political subdivisions thereof, or other responsible local agencies have given assurances satisfactory to the Secretary of the Army that they will (a) provide without cost to the United States all lands, easements, and rights-of-way necessary for the construction of the project, except as otherwise provided herein; (b) hold and save the United States free from damages due to the construction works; (c) maintain and operate all the works after completion in accordance with regulations prescribed by the Secretary of the Army:
- The November 6, 1953 MOU states:
 - The State fully recognizes and accepts its obligation to operate and maintain all completed project works and has given assurances of local cooperation required by federal law. Such assurances obligating the State are limited to: . . . The operation and maintenance of all works, after completion, in accordance with the regulations prescribed by the Secretary of the Army.



THE STATE LOOKS DOWNSTREAM

- To participate with USACE, the State required that the locals had to agree to perform the actual O&M for the State, except as to Water Code section 8361 facilities. (WC section 12828).
- This was a condition to the State agreeing to be the non-Federal sponsor for the project, and was the basis for most LMAs signing up.
- Everything is only O&M at this point.



ISN'T A CONTRACT ENOUGH?

- Legislature passes Water Code sections 8370 and 12642 to further address local responsibility.
- Water Code Section 8370: “It is the responsibility, liability and duty of the reclamation districts, levee districts, protection districts, drainage districts, municipalities, and other public agencies within the Sacramento River Flood Control Project limits, to maintain and operate the works of the project within the boundaries or jurisdiction of such agencies, excepting only those works enumerated in Section 8361 and those for which provision for maintenance and operation is made by Federal law.”
- Provisions potentially not effective.



O&M STANDARDS CHANGE

- In 1994, USACE issued ER 1110-2-401 requiring that O&M manuals also include the following:
 - Repair
 - Replace; and
 - Rehabilitate.
- The authority is 1986 WRDA section 103(j)(1).
- The ER notes:
 - “Repair is considered to entail those activities of a **routine nature** that maintain the project in a well kept condition. Replacement covers those activities taken when a **worn-out** element or portion thereof is replaced. Rehabilitation refers to a set of activities as necessary to **bring a deteriorated project back to its original condition**. RR&R actions are to conform to the project as-built plans and specifications unless other arrangements are made with the district commander. These activities are the responsibility of the project sponsor.”



O&M STANDARDS CHANGE

- This change came slowly to our region, perhaps because few new agreements were signed thereafter where it would be relevant. Non-Federal interests only commit to the Corps in the following cases:
 - Signing an agreement for the Corps to construct a project;
 - Getting permission from the Corps to modify a project (section 408).
- Thus, passage of Prop 1 e, which generated over \$4B for projects resulted in numerous 408 permissions, and further development of USACE led studies and projects.
- And the issue became ripe.



SBFCA, AS AN EXAMPLE

- SBFCA has agreed, or will agree, to OMRR&R its project because:
 - Condition of its funding agreement.
 - Condition of the "408" permission it received from the Corps.
 - Will be required for USACE construction of Star Bend South.
 - Required for PL 84-99 eligibility.
 - Required for FEMA accreditation.
- SBFCA now needs someone to sign the OMRR&R agreement to get retention.



WHO WILL DO OMRR&R?

- Three options for doing OMRR&R:
 - SBFCA has previously agreed to do it, but most people prefer local action, not JPA action.
 - If no local district will do it, then State can form a maintenance area, resulting in loss of local control and assessment authority.
 - Or local districts can do the maintenance.
- The real question is, what is OMRR&R and who decides?
 - Replacement of the levee? Or of flap gate?
 - Rehabilitation of a levee? Or of a pump?

