

**Meeting of the Central Valley Flood Protection Board  
May 23, 2014**

**Staff Report – Project Cooperation Agreement Amendment No. 5**

**US Army Corps of Engineers (USACE)  
American River Common Features Project, Sacramento County**

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**REQUEST FOR BOARD ACTION**

Consider approval of Resolution No. 2014-19 to:

1. Approve Amendment No. 5 to the Project Cooperation Agreement.
2. Delegate to the Board President the authority to execute Amendment No. 5 in substantially the form attached hereto.

The Project Cooperation Agreement (PCA) Amendment No. 5 will allow the US Army Corps of Engineers (USACE) to increase the total project cost of the American River Common Features (ARCF) Project to \$320,000,000. With the increase in total project cost, the USACE will be able to complete the remaining nine ARCF construction sites during 2014 and closeout the project with an accelerated schedule by September 2015. If PCA Amendment No. 5 is not approved, the USACE will be unable to utilize on-hand funding to complete the remainder of the project.

**SPONSORS**

The ARCF Levee Improvement Project is a cooperative effort between the US Army Corps of Engineers (USACE), the State of California (CVFPB), and the Sacramento Area Flood Control Agency (SAFCA).

**BACKGROUND**

The American River Watershed Common Features Project was initially described in the Supplemental Information Report and was first authorized in Water Resources Development Act (WRDA) of 1996 and modified in WRDA 1999. The State authorized the American River Watershed Common Features Project in 1997 under California Water Code Sections 12670.10, 12670.11, 12670.12, 12670.14 and 12670.16.

The American River Common Features Project and General Reevaluation Report (GRR) will provide flood damage reduction improvements along the lower American River (downstream of Folsom Dam), the Sacramento River (downstream of the Natomas Cross Canal), and the Natomas Cross Canal. Proposed improvements include: (1) strengthening levees to reduce the chance of failure due to seepage and levee instability; (2) raising

levees to increase flood conveyance capacity; (3) providing an improved automated advance flow release warning system along the lower American River to facilitate emergency evacuation of the floodway; and (4) providing telemetric stream gages upstream of Folsom Dam to improve reservoir operational flow release criteria during flood events. Collectively, these improvements (with work at Folsom Dam) will result in a minimum 200-year-level of flood protection in this area.

The Project Cooperation Agreement (PCA) was executed in July 1998 and incorporated a spending cap of \$56.9 million; total project cost was amended in September 2006 to \$205 million.

The remaining nine construction sites for ARCF are R3A, L5A, R7, L7, L10, NEMDC North, NEMDC Extension, Jacob Lane C and Mayhew Extension. The remaining sites are the most difficult construction projects authorized under ARCF and include numerous utility relocations, difficult job sites (bridge crossings, major road intersections and sump pumps) and advanced cutoff wall construction methods such as jet grout and open trench.

### **COSTS**

Total project cost for the ARCF Project is currently estimated at \$284,000,000 including adjustments accounting for inflation to September, 2013. The project is cost-shared 75% federal, and 25% non-federal. The non-federal share is further divided into 70% CVFPB and 30% SAFCA as defined in the Local Project Cooperation Agreement. Approval of PCA Amendment No. 5 will provide a total project cost of \$320,000,000. The total project cost increase is necessary to support an increase in Federal funds for fiscal year 2014 and an accelerated construction and closeout schedule with project closeout estimated for September 30, 2015. The Department of Water Resources Flood Projects Office believes the State and SAFCA have the financial capability to fund the remaining project.

### **STAFF RECOMMENDATION**

Staff recommends that the Board approve Project Cooperation Agreement Amendment No. 5 for the American River Common Features Project; delegate to the Board President the authority to execute Amendment No. 5 in substantially the form attached hereto.

### **LIST OF ATTACHMENTS**

- A. PCA Amendment No. 5
- B. Resolution No. 2014-19: Project Cooperation Agreement Amendment No. 5

STATE OF CALIFORNIA  
THE RESOURCES AGENCY  
CENTRAL VALLEY FLOOD PROTECTION BOARD  
RESOLUTION 2014-19  
AMERICAN RIVER WATERSHED COMMON FEATURES PROJECT,  
CALIFORNIA  
LOWER AMERICAN RIVER FEATURES AS MODIFIED BY WATER  
RESOURCES DEVELOPMENT ACT OF 1999  
PROJECT COOPERATION AGREEMENT AMENDMENT NO. 5

WHEREAS, Congress authorized levee improvements known as American River Watershed Common Features Project in the Water Resources Development Act (WRDA) of 1996, (Public Law 104-303); and

WHEREAS, the State authorized the American River Watershed Common Features Project in 1997 under California Water Code Sections 12670.10, 12670.14 and 12670.16; and

WHEREAS, construction of the American River Watershed (Common Features), California Project (hereinafter the "Project") was authorized by Section 101(a)(1) of the Water Resources Development Act of 1996, Public Law 104-303, at a total cost of \$56,900,000; and

WHEREAS, Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, specifies the cost-sharing requirements applicable to the Project; and

WHEREAS, the United States Army Corps of Engineers (USACE) and the Central Valley Flood Protection Board, as successor to the California State Reclamation Board, (Board) entered into a Project Cooperation Agreement on July 13, 1998 (Agreement) for construction of the Project; and

WHEREAS, the Project authorization was modified by Section 366 of the Water Resources Development Act of 1999, Public Law 106-53, to include certain improvements as part of the overall Project, and was amended by Section 366 to increase the total cost of the Project to \$91,900,000; and

WHEREAS, the USACE and the Board entered into Amendment Number 1 to the Agreement on June 13, 2003 to update the project cost to \$120,600,000 to accommodate the design and construction changes associated with deep foundation slurry cutoff walls required for the Project; and

WHEREAS, the Project authorization was further modified by Section 129 of Public Law 108-137, the Energy and Water Development Appropriations Act, 2004, to increase the total cost of the Project to \$205,000,000, and the USACE and the Board entered into Amendment Number 2 to the Agreement on September 5, 2006 to update the project cost to \$205,000,000; and

WHEREAS, the USACE and the Board entered into Amendment Number 3 to the Agreement on July 20, 2006 to allow for the Board to accelerate its provision of funds to the USACE; and

WHEREAS, the USACE and the Board entered into Amendment Number 4 to the Agreement on June 21, 2007 to amend the Agreement's definition of the Project to include certain improvements authorized in Section 366 of the Water Resources Development Act of 1999, Public Law 106-53; and

WHEREAS, Section 112 of the Consolidated Appropriations Act of 2014, Public Law 113-76 states that "during fiscal years 2014 and 2015, the limitation relating to total project costs in section 902 of the Water Resources Development Act of 1986 (33 U.S.C. 2280) shall not apply with respect to any project that receives funds made available by this title;" and

WHEREAS, the Project received funds from the Consolidated Appropriations Act of 2014 in fiscal year 2014 and therefore this project is included within the coverage of Section 112 of that law; and

WHEREAS, the USACE and the Board wish to amend the Agreement to reflect the new current total project cost estimate.

NOW, THEREFORE, BE IT RESOLVED that the Board

1. Approves Amendment No. 5 to the Project Cooperation Agreement in substantially the form attached hereto.
  
2. Delegates to the Board President the authority to execute the Amendment No. 5 in substantially the form attached hereto.

PASSED AND ADOPTED by vote of the Board on \_\_\_\_\_, 2014.

\_\_\_\_\_  
William H. Edgar  
President

\_\_\_\_\_  
Jane Dolan  
Secretary

AMENDMENT NUMBER 5  
TO THE  
PROJECT COOPERATION AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
THE STATE OF CALIFORNIA, THE CENTRAL VALLEY FLOOD PROTECTION  
BOARD  
FOR CONSTRUCTION OF THE  
AMERICAN RIVER WATERSHED (COMMON FEATURES), CALIFORNIA  
PROJECT

THIS AMENDMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_., by and between the Department of the Army (hereinafter the “Government”), represented by The Assistant Secretary of the Army (Civil Works) and the STATE OF CALIFORNIA, represented by the President of THE CENTRAL VALLEY FLOOD PROTECTION BOARD (hereinafter the “Non-Federal Sponsor”).

WITNESSETH, THAT:

WHEREAS, construction of the American River Watershed (Common Features), California Project (hereinafter the “Project”) was authorized by Section 101(a)(1) of the Water Resources Development Act of 1996, Public Law 104-303, at a total cost of \$56,900,000;

WHEREAS, Section 103 of the Water Resourced Development Act of 1986, Public Law 99-662, as amended, specifies the cost-sharing requirements applicable to the Project;

WHEREAS, the Government and the Non-Federal Sponsor entered into a Project Cooperation Agreement on July 13, 1998 (hereinafter the “Agreement”) for construction of the Project;

WHEREAS, the Project authorization was modified by Section 366 of the Water Resources Development Act of 1999, Public Law 106-53, to include certain improvements as part of the overall Project, and was amended by Section 366 to increase the total cost of the Project to \$91,900,000;

WHEREAS, the Government and the Non-Federal Sponsor entered into Amendment Number 1 to the Agreement on June 13, 2003 to update the project cost to \$120,600,000 to accommodate the design and construction changes associated with deep foundation slurry cutoff walls required for the Project;

WHEREAS, the Project authorization was further modified by Section 129 of Public Law 108-137, the Energy and Water Development Appropriations Act, 2004, to increase the total cost of the Project to \$205,000,000, and the Government and the Non-Federal Sponsor

entered into Amendment Number 2 to the Agreement on September 5, 2006 to update the project cost to \$205,000,000;

WHEREAS, the Government and the Non-Federal Sponsor entered into Amendment Number 3 to the Agreement on July 20, 2006 to allow for the Non-Federal Sponsor to accelerate its provision of funds to the Government;

WHEREAS, the Government and the Non-Federal Sponsor entered into Amendment Number 4 to the Agreement on June 21, 2007 to amend the Agreement's definition of the Project to include certain improvements authorized in Section 366 of the Water Resources Development Act of 1999, Public Law 106-53;

WHEREAS, Section 112 of the Consolidated Appropriations Act of 2014, Public Law 113-76 states "*During fiscal years 2014 and 2015, the limitation relating to total project costs in section 902 of the Water Resources Development Act of 1986 (33 U.S.C. 2280) shall not apply with respect to any project that receives funds made available by this title;*"

WHEREAS, the Project received funds from the Consolidated Appropriations Act of 2014 in fiscal year 2014 and therefore this project is included within the coverage of Section 112 of that law; and

WHEREAS, the Government and the Non-Federal Sponsor wish to amend the Agreement to reflect the current total project cost estimate.

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree that the Agreement is hereby amended in the following particulars but in no others:

1. Delete the contract termination date of October 30, 2008 shown in Amendment No. 2 Article II.2.

2. ARTICLE II, A.3. shall read as follows:

"3. Notwithstanding paragraph A.1. of this Article, if, upon award of any contract for construction of the Project, cumulative financial obligations for construction would exceed \$320,000,000, the Government and the Non-Federal Sponsor agree to defer award of that contract and all subsequent contracts for construction of the Project until such time as the Government and the Non-Federal Sponsor agree to proceed with further contract awards for the Project, but in no event shall the award of contracts be deferred for more than three years. Notwithstanding this general provision for deferral of contract awards, the Government, after consultation with the Non-Federal Sponsor, may award a contract or contracts after the Assistant Secretary of the Army (Civil Works) makes a written determination that the award of such contract or contracts must proceed in order to comply with law or to protect life or property from imminent and substantial harm."

3. ARTICLE VI.A. shall read as follows:

“A. The Government shall maintain current records of contributions provided by the parties and current projections of total project costs and costs due to betterments. By April 1 of each year and at least quarterly thereafter, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of total project costs, of total costs due to betterments, of the maximum amount of total project costs determined in accordance with Article XIX of this agreement, of the components of total project costs, of each party’s share of total project costs, of the Non-Federal Sponsor’s total cash contributions required in accordance with Articles II.B., II.D., and II.E. of this Agreement, of the Non-Federal proportionate share, and of the funds the Government projects to be required from the Non-Federal Sponsor for the upcoming fiscal year. On the effective date of this Agreement, total project costs are projected to be \$320,000,000, and the Non-Federal Sponsor’s cash contribution required under Article II.D. of this Agreement is projected to be \$73,650,000. Such amounts are estimates subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.”

4. ARTICLE XIX. shall read as follows:

“The Non-Federal Sponsor has reviewed the provisions set forth in Section 902 of Public Law 99-662, as amended, and understands that Section 902 establishes the maximum amount of total project costs for the American River Watershed (Common Features), California Project. Notwithstanding any other provision of this Agreement, the Government shall not make a new Project financial obligation, make a Project expenditure, or afford credit toward total project costs for the value of any contribution provided by the Non-Federal Sponsor, if such obligation, expenditure, or credit would result in total project costs exceeding this maximum amount, unless otherwise authorized by law. On April 14, 2014, this maximum amount is estimated to be \$284,237,000, as calculated in accordance with ER 1105-2-100 using October 2013 price levels and allowances for projected future inflation. The Government shall adjust this maximum amount in accordance with Section 902.”



IN WITNESS WHEREOF, the parties hereto have executed this amendment to the Agreement, which shall become effective upon the date it is signed by the authorized representative of the Government.

DEPARTMENT OF THE ARMY

THE STATE OF CALIFORNIA'S  
CENTRAL VALLEY FLOOD  
PROTECTION BOARD

BY: \_\_\_\_\_  
**Colonel Michael Farrell**  
**District Engineer**  
**Sacramento District**

BY: \_\_\_\_\_  
**Bill Edgar**  
**President, Central Valley Flood**  
**Protection Board**

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

CERTIFICATE OF AUTHORITY

I, \_\_\_\_\_, do hereby certify that I am the principal legal officer for this project of the State of California, Central Valley Flood Protection Board, that the State of California, Central Valley Flood Protection Board is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the State of California, Central Valley Flood Protection Board in connection with the American River Watershed (Common Features) Project, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement, as required by Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and that the persons who have executed this Agreement on behalf of the State of California, Central Valley Flood Protection Board have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

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**Jeremy Goldberg**  
**Attorney, Office of the Chief Counsel**  
**California Department of Water Resources**

## CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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**Jay S. Punia**  
**General Manager**  
**Central Valley Flood Protection Board**

DATE: \_\_\_\_\_