

**SACRAMENTO AND SAN JOAQUIN DRAINAGE DISTRICT  
ASSESSMENT DISTRICT FEASIBILITY STUDY  
FINAL REPORT OF FINDINGS**

**MAY 17, 2024**

**PREPARED FOR THE CENTRAL VALLEY FLOOD PROTECTION BOARD**

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# Executive Summary

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## Purpose of the Study

The Central Valley Flood Protection Plan (CVFPP) is prepared by the California Department of Water Resources (DWR) in accordance with the Central Valley Flood Protection Act (Act) of 2008. It was first adopted by the Central Valley Flood Protection Board (CVFPB) in June 2012, and by law must be updated every five years. The CVFPP identifies priorities (projects and programs) for the State's investment in flood management over a 30-year period and encourages the incorporation of multi-benefit projects and ecosystem improvements into flood-risk reduction projects.

One of the greatest challenges for implementing the ideals of the CVFPP is funding. The 2017 CVFPP Update Investment Strategy identified three new potential funding mechanisms, to include reutilizing the Sacramento and San Joaquin Drainage District (SSJDD) to resume assessments to fund the local cost share of capital and on-going management activities. The Investment Strategy proffered that revenue from SSJDD assessments could provide up to \$15 million per year and increase to \$25 million per year by the end of the CVFPP planning horizon (30 years) for levee operations and maintenance (O&M) and the local cost share of capital improvements. Based on this, the 2017 CVFPP recommended evaluating the viability and effectiveness of reutilizing the SSJDD for these purposes.

As a next step, the Board's request for \$1.3 million in funding to complete an SSJDD assessment feasibility study was included in the Department of Water Resources Capital Outlay Budget Change Proposal (COBCP) in May 2018. The request was warranted given the Board, by way of the district, hadn't collected assessments in nearly 80 years. It was imperative, therefore, that the analysis include existing legal authority in the context of current benefit assessment law and practice (California (CA) Proposition 218; CA Constitution Article XIII D Section). In September 2018, the Legislative Analyst's Office issued its Supplemental Report of the 2018-19 Budget Act and directed the Central Valley Flood Protection Board to develop a report "that provides an update on its activities to generate additional revenues to support its operations," and cited the SSJDD assessment as one of five areas to be included in that report.

In response, the CVFPB initiated the SSJDD Assessment District Feasibility Study (Study) in December 2019. The purpose of the Study was refined to address the following objectives:

- Evaluate the feasibility of an SSJDD Assessment District to provide local funding for system-wide improvements and O&M of associated flood control structures and levees within the State Plan of Flood Control (SPFC);
- Identify legislative changes required to implement an SSJDD Assessment District;
- Perform beneficiary analyses to establish a reasonable formula to apportion the assessment across benefiting properties;
- Provide recommendations for the formation and operation/administration of an SSJDD Assessment District; and
- Prepare an implementation plan for establishing an SSJDD Assessment District.

## **Analysis of Existing SSJDD Assessment District Authority**

The authorities provided to the State Reclamation Board, now known as the CVFPB, as part of the creation of the SSJDD in 1913 were included in the creation of the Water Code in 1943 by Chapters 368 and 369 of the California Statutes, specifically Water Code Division 5, Part 4, Chapter 5 – Assessments (§§8750 – 8864).

The SSJDD authority is narrowly limited to levying assessments to support implementation of the plans for reclamation and flood control contained in the California Debris Commission Report approved on December 27, 1911, and as amended January 5, 1925. Funding for CVFPB operations and purposes not associated with these plans – such as multi-benefit projects identified in the CVFPP --are not authorized uses of SSJDD assessment revenues. In addition, an assessment under the current authority cannot be implemented without written approval from a super-majority of landowners *and* a super-majority of assessed lands. If the super-majority approvals are not granted within six months of the related public hearing, the assessment may not be implemented. This is at odds with the approval requirements under CA Proposition 218, which is the legislation that since 1996 has governed the imposition of special benefit assessments (CA Constitution Article XIII D Section 4). As per Article XIII D Section 4, the administrative process for imposing a special benefit assessment requires a balloting process (method of protest) of all lands subject to the assessment. Property owners have 45 days to return ballots. The public agency may not impose the assessment if a majority protest exists, which occurs when the ballots submitted opposing the assessment exceed the ballots submitted in favor of the assessment. The ballots must be weighted according to the proportional financial obligation of each affected property (e.g. \$1 of proposed assessment is equal to one vote). The administrative and landowner approval process under Article XIII D Section 4 is commonly understood and presents a reasonable, albeit high bar for implementation of property assessments.

In conclusion, the existing SSJDD assessment authority is strictly limited to funding capital improvements identified in the California Debris Commission’s plans for reclamation and flood control, which is antiquated and no longer relevant to objectives of the CVFPP. New legislation would be required to authorize the SSJDD to levy an assessment to support the purposes intended in the CVFPP and to align to commonly understood approval requirements for special benefit assessments under CA Prop 218 (CA Constitution Article XIII D Section 4).

## **Study Approach**

As per the May 2018 COBCP, the feasibility study was to “involve local stakeholder input and cover topics such as benefits, funding, capacity, and legal constraints” and leverage “the successful platforms established during the preparation of the 2017 CVFPP Update.” To achieve this, the project team focused on early engagement with Local Maintaining Agencies (LMAs) and related interest groups to identify the service areas to be included for technical analysis. The goal was to incorporate a “bottom up” process by focusing on service areas that LMAs could support for advancement through the study. It was made clear, however, that supporting a concept for study was not to be confused with supporting the concept for implementation. Generally speaking, LMAs were invited to participate via Regional Flood Management Plan and interest groups. More than 30 meetings were held during the course of the study.

In the early rounds of engagement, LMAs made it clear that any funds raised through SSJDD assessments were “local funds” as opposed to a new funding source, one that potentially could reduce the LMAs’ ability to raise needed assessment revenues for their required services. They were also

Skeptical that the state could impose assessments in a more cost-effective manner than local LMAs and were staunchly opposed to using SSJDD assessment revenues to fund CVFPB positions and ongoing operations. Participating LMAs proceeded to identify three maintenance challenges and funding constraints that could potentially be resolved through an SSJDD assessment (Service Categories 1-3) and that they were willing to support for feasibility analysis. Another two areas were identified from the findings of Department of Water Resources Small Communities Flood Risk Reduction Feasibility Studies (Service Categories 4-5). The following describes the five Service Categories that were advanced through the Study:

**Category 1 - Services that Leverage Beneficiaries Beyond the Boundaries of Individual LMAs**

This category considers a mechanism for the CVFPB to levy assessments on properties receiving benefit beyond the boundaries of LMAs responsible for maintaining the regional facilities and allocate those revenues to the LMAs responsible for O&M of the regional facilities. The assessment revenue could also be used to supplement the local cost share of major repairs or capital improvements to regional facilities.

*It is important to note that the evaluation of an SSJDD assessment for O&M of regional facilities is not intended to be a replacement for the State's obligation to operate and maintain facilities identified in Water Code §8361. While this is an important topic among LMAs, this study is not intended to address, support, or question the reasoning behind which facilities were, or were not, identified as 8361 Facilities.*

**Category 2 – Services that Provide Regional Benefits within a River Corridor**

This category considered funding a CVFPB program to perform services that support or accomplish O&M activities that benefit all LMAs within a river corridor. Utilizing an SSJDD assessment to fund these regional activities could be more cost-effective as a single regional action and avoid duplicative effort and costs associated with the individual actions carried out by each LMA.

**Category 3 – Capital Improvements/Repairs within State Maintenance Areas (MAs)**

This category considers overlaying an assessment on a State Maintenance Area (MA) to fund a capital improvement/repair program, which could potentially overcome MA assessment limitations and result in a more affordable, consistent annual assessment for property owners. The potential benefits of utilizing an SSJDD assessment in lieu of a local agency-led assessment also include absorbing into the assessment the upfront costs that are associated with establishing a local governance and implementing a Proposition 218 assessment.

**Category 4 – Regional Assessment for Capital Improvement Programs to Support Small Communities**

This category was identified and reported to be a potential opportunity to utilize an SSJDD assessment to resolve governance issues in locally-led regional assessments, specifically where adjacent communities are separated by political boundaries (e.g. district; county) and no regional flood management entity exists.

**Category 5 – Financing Program for Nonstructural Flood Mitigation Measures**

Nonstructural flood mitigation measures are often a cost-effective solution to reduce flood risk in areas protected by the State Plan of Flood Control (SPFC). Federal Emergency Management Agency (FEMA) grant programs are available for nonstructural flood mitigation projects, but these grant programs typically require a non-federal match of 25% of the project cost. This Category evaluates establishing a new authority for the SSJDD to allow property owners to finance the non-federal cost share of

nonstructural improvements – such as raising structures -- and voluntarily assess themselves for the repayment of financed costs.

## **Methods for Feasibility-Level Analysis**

As noted in the 2018 COBCP, “...there are many factors that must be explored to determine the feasibility of the assessment.” To meet the study team’s feasibility criteria, the beneficiary analysis for each Service Category was analyzed on whether: the assessment methodology was technically sound; the methodology resulted in a reasonable return on investment (e.g. ratio between revenues and administrative costs); the Service Category would supplement but not compete with local agency funding; it was affordable for landowners; there was a clear path for implementation.

For Categories 1-3, varying benefit allocation methodologies were developed to determine the amount of benefit provided by the service, and to apportion the cost of providing this benefit to each area according to the benefit received. Test cases were then developed to identify potential issues with the methodology and assess technical feasibility. Service Category 4 was evaluated in part by leveraging findings for Category 3 due to the similar limitations in local funding capacity. Service Category 5 used the State’s Property Assessed Clean Energy (PACE) program as a conceptual model for program development.

## **Overview of Findings**

### **Category 1: Meets Feasibility Study Criteria**

The test cases resulted in a reasonable range of assessment rates for each land use classification. However, in some rural areas, the assessment rates for Single Family Residential (SFR) properties were disproportionately larger than expected due to the concentration of flood-related damages. This could be corrected by providing flexibility in the methodology to apportion the assessment to properties by parcel size (i.e., acreage). This Category is technically feasible.

### **Category 2: Meets Feasibility Study Criteria**

The test case demonstrated that an SSJDD assessment would be capable of generating sustainable annual revenue to support regional activities within a river corridor for a nominal charge per parcel. However, further refinement of the services to be funded is needed to reconcile the cost of service against the required charge per parcel. This Category is technically feasible.

### **Category 3: Does Not Meet Feasibility Study Criteria**

Although an SSJDD assessment would overcome the assessment limitations of an MA, it would be impractical to implement an SSJDD assessment to fund capital improvements due to the limited assessment capacity of small communities (i.e. Poor ratio between assessment revenues and cost for administration). For this reason, this Category was deemed infeasible. However, interested parties have requested this category remain part of any authorizing legislation due to limited options in small/rural communities for raising local cost share for projects.

### **Category 4: Does Not Meet Feasibility Study Criteria**

This Category of service was identified and reported to be a potential opportunity to utilize an SSJDD assessment instead of a locally-led regional assessment, particularly when neighboring communities reside in different counties, further complicating the governance of the regional assessment. However, consistent with the beneficiary analysis performed for Category 3, it is unlikely that an SSJDD assessment would provide a more cost-effective alternative in comparison to a locally-led regional

assessment. For that reason, the Category was deemed infeasible. However, interested parties have requested this category remain part of any authorizing legislation due to limited options in small/rural communities for raising local cost share for projects.

#### **Category 5: Meets Feasibility Study Criteria**

In the case of the SSJDD, a program to support non-structural flood mitigation actions would require separate legislative authorization, establishment of a reserve fund to protect mortgage lenders against the risk of default and foreclosure, development of eligibility criteria, and a process for applications and distribution of funds. This Category is technically feasible.

### **Recommendations/Next Steps**

Existing SSJDD authorities are not aligned with existing law that govern the imposition of special benefit assessments (Prop 218; Article XIII D Section 4) for the construction and maintenance of flood risk reduction projects as identified in the CVFPP. Furthermore, the existing authority's supermajority approval requirement of two-thirds of landowners *and* two-thirds of assessable land presents a significant challenge to the imposition of assessments for construction and maintenance of capital projects. In addition, imposition of assessments under existing legal authority could potentially decrease local funding capacity due to conflicts with local agency revenue requirements, if not implemented with local agency support. Most notably, existing authorities preclude the use of SSJDD revenues for Board operations. In sum, the SSJDD's authorities (circa 1925) are not workable in today's context.

That said, there is potential to reutilize the SSJDD through new or amended legislation. First, authorities must be aligned with existing and commonly understood requirements under CA Prop 218 (Article XIII D Section 4). New legislation could advance three of the five Categories of Service that were determined to meet established study criteria but may also include all five as per interested party input. It is important to note that reutilization and use of the SSJDD Assessment District will not be possible without support from LMAs and other local agencies, such as tax collecting agencies (counties). And, there will be no support for use of SSJDD revenues for Board operations.

In the near-term, the Board should continue to engage LMAs to further refine Categories of Service investigated in this study. Additionally, the Board must accurately assess the cost of developing and administering assessments and determine how those costs shall be covered. Once costs are clear, it should work with the California Central Valley Flood Control Association (CCVFCA) and other interested parties to develop legislation that supports collection of SSJDD assessments in accordance with requirements for local Agencies under CA Prop 218 (Article XIII D of the California Constitution), and to cover agreed-upon services. If legislation is adopted, the Board should work with LMAs and the CCVFCA to develop assessment formation guidelines for implementation. As an example, guidelines for any future SSJDD assessment should require LMAs to initiate a request to the CVFPB to begin assessment district formation actions to ensure local/state partnership.



# 1. Introduction

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The Central Valley Flood Protection Plan (CVFPP) is prepared by the California Department of Water Resources (DWR) in accordance with the Central Valley Flood Protection Act (Act) of 2008. It was first adopted by the Central Valley Flood Protection Board (CVFPB) in June 2012, and by law must be updated every five years. The CVFPP identifies priorities (projects and programs) for the State's investment in flood management over a 30-year period and encourages the incorporation of multi-benefit projects and ecosystem improvements into flood-risk reduction projects.

One of the greatest challenges for implementing the ideals of the CVFPP is funding. The 2017 CVFPP Update included an Investment Strategy that identified three new potential funding mechanisms, to include reutilizing the Sacramento and San Joaquin Drainage District (SSJDD) to resume assessments to fund the local cost-share of capital and on-going management activities. The Investment Strategy proffered that revenue from SSJDD assessments could provide up to up to \$15 million per year and increase to \$25 million per year by the end of the CVFPP planning horizon (30 years) for levee operations and maintenance (O&M) and the local cost share of capital improvements. Based on this, the 2017 CVFPP recommended evaluating the viability and effectiveness of reutilizing the SSJDD for these purposes.

The Board's request for \$1.3 million in funding to complete an SSJDD assessment feasibility study was included in the Department of Water Resources Capital Outlay Budget Change Proposal (COBCP) in May 2018. The request was warranted given the fact that the Board, by way of the district, hadn't collected assessments in 80 years. As such, a study required the analysis of existing legal authority in context of current benefit assessment law and practice. In September 2018, the Legislative Analyst's Office issued its Supplemental Report of the 2018-19 Budget Act and directed the CVFPB to develop a report "that provides an update on its activities to generate additional revenues to support its operations," and cited the SSJDD assessment as one of five areas to be included in that report. Considerations were to include the status of implementation, amount of revenue generated thus far, estimated annual revenues in future years, barriers to implementation, suggestions for addressing identified barriers.

In response, the CVFPB initiated the SSJDD Assessment District Feasibility Study (Study) in December 2019. To best meet the directives as defined in the Supplemental Report, the purpose of the Study was refined to address the following objectives:

- Evaluate the feasibility of an SSJDD Assessment District to provide funding for system-wide improvements and the operation and maintenance (O&M) of associated flood control structures and levees within the State Plan of Flood Control (SPFC);
- Identify legislative changes required to implement an SSJDD Assessment District;
- Perform beneficiary analyses to establish a reasonable formula to apportion the assessment across benefiting properties;
- Provide recommendations for the formation, operation and administration of an SSJDD Assessment District; and
- Prepare an implementation plan for establishing an SSJDD Assessment District.

## 2. SSJDD Assessment Authority

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### Background

The California legislature created the State Reclamation Board in 1911 (authority transferred to the CVFPB in 2007) with the objective of cooperating with the US Army Corps of Engineers to control flooding along the Sacramento and San Joaquin Rivers and their tributaries. In 1913, the legislature created the Sacramento and San Joaquin Drainage District (SSJDD) with the authority to acquire property and easements for flood control and to levy assessments to construct and maintain flood control facilities. A total of eight assessments were formed by the Reclamation Board:

- Assessment No. 1: General administrative services
- Assessment No. 2: Sacramento River Outlet
- Assessment No. 3: Sacramento Bypass
- Assessment No. 4: Fremont Weir
- Assessment No. 5: Freeport Levee
- Assessment No. 6: Sutter-Butte Bypass
- Assessment No. 7: Feather River
- Assessment No. 8: Hood Levee

The 2017 CVFPP Investment Strategy stated that the SSJDD ceased levying assessments in the late 1930s as a large number of properties were sold for delinquent assessments, degrading the value of the bonds to point that they were greatly discounted. As a result, the State Reclamation Board concluded that the assessment authority would no longer be used and SSJDD assessments collections were ceased at that time, though they remain authorized under the California Water Code (Water Code).

### Current SSJDD Assessment Authority

The authorities provided to the State Reclamation Board as part of the creation of the SSJDD in 1913 were continued when the Water Code was created in 1943, specifically WATER CODE Division 5, Part 4, Chapter 5 – Assessments (§§8750 – 8864). The fundamental elements of the SSJDD Assessment District authority are summarized as follows.

#### ***Purpose***

The Board may propose to levy an assessment within the SSJDD when, in its opinion, it is necessary for any of the purposes specified in the Water Code, sections 8750 – 8864. The purposes include the execution of plans for reclamation and flood control (“The Plans”) contained in the California Debris Commission Report approved on December 27, 1911, and as amended January 5, 1925, in cooperation with the United States and local interests (Water Code §§8525 – 8529).

#### ***Projects and Costs***

The Plans are to be divided into separate projects, or units, to facilitate the levying of an assessment in an equitable manner according to the benefits that accrue to lands provided by each project. An estimate for each project shall consider the costs and expenses necessary for the Board to adopt and complete the project, and the expenses of bonding the assessment (Water Code §§8751 – 8752)

### ***Benefit Determination***

In determining the benefit, all elements of the works included in the project shall be considered as a whole, and land will be assessed in proportion to the benefit accrued from constructing the entire project. Land that is flooded, or has its natural drainage obstructed, as result of constructing the project will not accrue benefit from the project. (Water Code §§8757 – 8758).

### ***Boundary Restrictions***

The Board has no authority to levy an assessment upon lands outside the boundaries of the SSSJDD, as defined in Water Code §8501.

### ***Formation Procedures***

The Board will appoint three assessors that have no interest in any real estate within the drainage district to examine the plans and estimates. The assessors will prepare a preliminary report identifying the lands that benefit from completion of the project and the method to apportion the assessment. The assessors will give notice and conduct a hearing in each county to receive objections to the preliminary report and evidence concerning the assessment methodology. The assessors may modify the preliminary report based on testimony at the hearing. (Water Code §§ 8775-8783)

### ***Approval Requirements***

The Board may levy the assessment if, within six months of the public hearing, so long as written consent to the contemplated project is signed and acknowledged by both:

1. Landowners representing 66 percent or more of the value of land described in the preliminary report, as shown on the preceding county tax roll.
2. Sixty-six percent or more of landowners within the assessment district described in the preliminary report. (Water Code §8784)

If written consent is not filed within six months of the public hearing, the assessment shall not be levied and no further expenditures for the project shall be made. However, the Board may collect an assessment for the purpose of paying the costs and expenses to prepare the project plans and estimates, and for assessor's costs to prepare the preliminary report and to hold the public hearing.

## Legal Analysis

A legal analysis was performed<sup>1</sup> by Colantuono, Highsmith & Whatley in response to two concerns that arose when evaluating the existing SSJDD assessment authority.

### **Limitations Related to Water Code §8361**

Water Code §8361 identifies 16 elements of the Sacramento River Flood Control Project that must be maintained by the Department of Water Resources, which are commonly referred to as “8361 Facilities”. This analysis addressed whether an SSJDD Assessment could be levied to fund capital improvements and/or operations and maintenance associated with 8361 Facilities. Water Code §8361 states:

*“The department shall maintain and operate on behalf of the state the following units or portions of the works of the Sacramento River Flood Control Project, and the cost of maintenance and operation shall be defrayed by the state: [identifying 16 project elements].”*

The phrase “defrayed by the state” implies that the Department’s costs are covered by State funds. Including these specific facilities impliedly excludes other elements of the Sacramento River Flood Control Project. Furthermore, Water Code §8370 provides:

*“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.”*

Thus, the listed public agencies must operate and maintain all project facilities within their boundaries, unless the facility is to be maintained by the State (under §8361) or maintained under federal law.

Therefore, it was concluded that an SSJDD Assessment cannot be used to fund the operation and maintenance of the 8361 Facilities, which are the State’s responsibility. However, these statutes speak only to the duty to operate and maintain. Therefore, an SSJDD assessment could be levied to fund capital improvements for 8361 Facilities that are beyond normal maintenance repairs.

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<sup>1</sup> Legal analyses provided by Colantuono, Highsmith, Whatley, PC

## **Legislative Approval**

Article XIII A, Section 3 of the California Constitution, as amended by Proposition 26, requires that any change in state statute which results in any taxpayer paying a higher tax must be imposed by an act passed by not less than two-thirds (supermajority) of both houses of the Legislature. As used in this section, “tax” means any levy, charge or exaction of any kind **imposed** by the State of California. However, the fact that the Legislature authorizes the CVFPB to adopt an assessment under the proposed legislation does mean that the Legislature itself is “imposing” the assessment.

- “The ordinary meaning of ‘impose’ is ‘to establish.’” (*California Cannabis Coalition v. Upland* (2017) 3 Cal. 5th 924, 944).
- “[t]he phrase ‘to impose’ is generally defined to mean to establish or apply by authority or force, as in ‘to impose a tax.’” (*Ponderosa Homes v. San Ramon* (1994) 23 Cal.App.4th 1761, 1770).

Furthermore, Article XIII, Section 24 of the California Constitution establishes that “authorization” and “imposition” are distinct.

- “The Legislature may not impose taxes for local purposes but may authorize local governments to impose them.”

The act of authorizing the CVFPB to adopt an assessment to fund activities that support implementation of the CVFPP is not establishing an assessment or applying any charge by authority force because no charges are applied, unless and until the CVFPB acts to levy an assessment.

Therefore, it is concluded that approval of a new or amended authorizing legislation will not require a two-thirds (supermajority) approval by the Legislature.

## **Conclusions**

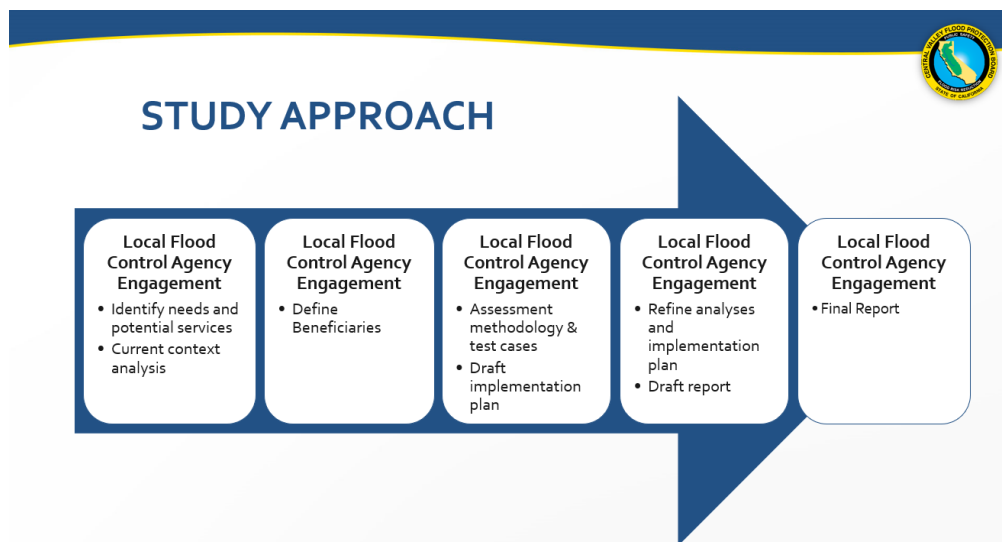
Existing SSJDD authorities are not aligned with existing law that govern the imposition of special benefit assessments (Prop 218; Article XIII D Section 4) for the construction and maintenance of flood risk reduction projects as identified in the CVFPP. Furthermore, the existing authority’s supermajority approval requirement of two-thirds of landowners *and* two-thirds of assessable land presents a significant challenge to the imposition of assessments for construction and maintenance of capital projects. In addition, imposition of assessments under existing legal authority could potentially decrease local funding capacity due to conflicts with local agency revenue requirements, if not implemented with local agency support. Most notably, existing authorities preclude the use of SSJDD revenues for Board operations. In sum, the SSJDD’s authorities (circa 1925) are not workable in today’s context.

Therefore, it is concluded that new legislation is required to authorize the SSJDD to levy an assessment to support the purposes intended in the CVFPP. This legislation should also establish procedures for imposing an assessment that are consistent with the requirements for special benefit assessments proposed by local agencies. Recommendations related to the new legislation are provided in Chapter six.

### 3. Local Flood Control Agency Engagement

#### Local Engagement Approach

As per the 2018 COBCP, the feasibility study was to “involve local stakeholder input and cover topics such as benefits, funding, capacity, and legal constraints” and leverage “the successful platforms established during the preparation of the 2017 CVFPP Update.” To achieve this, the program focused on early engagement with local flood control agencies (reclamation districts, levee maintaining agencies, regional flood management agencies and the CA Central Valley Flood Control Association) to help define the service areas to be included for technical analysis. The goal was to incorporate a “bottom up” process by focusing on areas that LMAs could support advancing through the study. It was made clear that supporting a concept for study was not to be confused with supporting the concept for implementation. More than 30 meetings were held during the study period. Meeting summaries and materials are included in Appendix A.



#### Rounds 1 and 2: Gain consensus on services to be included in the Study

An initial phase of meetings was conducted to define the services to be advanced for technical analysis. These meetings were designed to establish two-way communication with local flood control agencies, provide context and information about the Study process, and obtain general agreement on the Study approach. A total of 14 outreach meetings were conducted between March and August 2020. Meeting participants included representatives of the California Central Valley Flood Association (CCVFA), systemwide bypass operators (i.e., Local Maintaining Agencies (LMAs)), and representatives from each of the six Regional Flood Management Plan groups. An informational meeting was also held with CA Farm Bureau representatives from within the Study area. To initiate discussions, the project team provided a “brain dump” list of potential service areas for feasibility analysis. Local flood control agencies were asked to help the project team narrow down and refine service areas for study. A follow-up round of meetings was held to confirm the project team’s understanding of local flood control agency input and gain consensus on the service areas to advance in the Study.

## **Rounds 3 and 4: Review and refine Beneficiary Analysis and assessment methodology**

In the next round of meetings, the initial beneficiary analysis approach and results were presented to the LMAs to solicit feedback. Meetings also consisted of discussions on the development of the assessment methodology for each Category of Service(s). A total of seven outreach meetings were conducted during the period of October 2020 through June 2021. Additional one-on-one meetings were conducted to address local flood control agency questions or concerns.

Local flood control agencies were given the opportunity to provide feedback on potential beneficiaries, proposed approach to the methodology for quantifying relative benefit amongst regions of beneficiaries for each Category of Service, and the approach on estimating cost of services and allocation to regions of beneficiaries in proportion to relative benefit. Additionally, local flood control agencies were asked to provide feedback on potential test case locations and application process for each service area. Each established test case was used to determine the total SSJDD assessment revenue estimate. Based on this phase of outreach meetings, beneficiaries were identified, and test case locations and application process were established.

In follow-up meetings, the initial beneficiary analysis results for Category 1 Services were presented to the applicable local flood control agency groups to solicit feedback. Based on input provided by each group, a revised analysis was conducted. Multiple follow-up meetings were held with each group to present the revised Beneficiary Analysis for Category 1 Services. All questions and concerns regarding the beneficiary analysis approach were addressed prior to providing the CVFPB Board with a briefing at its June 2021 Board meeting.

This process of the outreach was iterative. The project team repeated this process for each of the remaining and applicable category of services.

## **Rounds 5 & 6: Implementation Plan and Report Findings**

An administrative draft of the Report of Findings (ROF) was circulated among interested parties in mid-January 2024. A follow up meeting was held on January 17, 2024. Interested parties were given two weeks for review and comment. Four sets of comments were received and used to inform revisions to the administrative draft. The revised administrative draft ROF was circulated again to interested parties and presented to the CVFPB on February 23, 2024. Board member comments were addressed for development of the Public Draft Report of Findings that was published on the Board's website. The Public Draft was circulated for a two-week public review period. No public comments were received on the Public Draft Report of Findings. The Final ROF was published on the CVFPB website on May 17, 2024.

## **Engagement with the CVFPB Board and the Coordinating Committee**

At each study milestone, the study team prepared and presented the study status, local flood control agency feedback, and future outlook of the study to the CVFPB during regular Board meetings and workshops. In total, the Board was briefed seven times during the study process. Additionally, the project team provided project updates to members of the CVFPB Coordinating Committee when appropriate.

## **4. Criteria for Determining Feasibility**

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As noted in the 2018 COBCP, "...there are many factors that must be explored to determine the feasibility of the assessment." To meet the study team's feasibility criteria, the beneficiary analysis for each Service Category was analyzed on whether: the assessment methodology was technically sound; the methodology resulted in a reasonable return on investment (e.g. ratio between revenues and administrative costs); the Service Category would supplement but not compete with local agency funding; it was affordable for landowners; and, there was a clear path for implementation.



## 5. Beneficiary Analysis

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During the first two rounds of engagement, local flood control agencies identified maintenance challenges and funding constraints that could potentially be resolved through an SSJDD assessment, which were grouped into five Categories of Service for further evaluation:

- Categories of Services 1 through 3 were identified as potential opportunities by local flood control agencies.
- Categories of Services 4 and 5 were identified from the Small Community Flood Risk Reduction Feasibility Studies.

This section of the report presents the Beneficiary Analyses performed to evaluate the technical feasibility of implementing an SSJDD assessment to fund each category of service.

### **Category 1 - Services that Leverage Beneficiaries Beyond the Boundaries of Individual Levee Maintenance Agencies**

Regional flood control facilities (e.g., bypass levees) provide benefit to adjacent properties protected by the regional facilities but also provide benefit to non-adjacent properties by relieving peak flows down the main stem of the river. The LMAs responsible for the O&M of the regional flood control facilities can collect assessments from properties within their boundaries (i.e., the adjacent properties). However, the LMAs cannot assess the properties located outside their boundaries (i.e., the non-adjacent properties) for benefit received from the O&M services. Therefore, the adjacent properties carry a larger proportionate burden of the cost to perform O&M.

Category 1 considers an SSJDD assessment to provide a mechanism for the CVFPB to levy assessments on properties receiving benefit beyond the boundaries of LMAs responsible for maintaining the regional facilities and allocates those revenues to the LMAs responsible for O&M of the regional facilities. The assessment revenue could also be used to supplement the local cost share of major repairs or capital improvements to regional facilities.

It is important to note that the evaluation of an SSJDD assessment for O&M of regional facilities is not intended to be a replacement for the State's obligation to operate and maintain facilities identified in Water Code §8361. While this is an important topic among LMAs, this study is not intended to address, support, or question the reasoning behind which facilities were, or were not, identified as 8361 Facilities.

#### ***Benefit Allocation Methodology***

The objective of the benefit allocation methodology is to determine the amount of benefit provided to areas at risk of flooding from the main stem of the river that is associated with operation of the regional facility, and then to apportion the cost of providing this benefit to each area according to the benefit received. It was important to define the following categories of benefit that result from operation of the regional facility to specify, and quantify, the basis for apportioning the assessment.

##### General Benefits:

General benefits are those that accrue to the State or to the public at-large and are not particular and distinct to properties within the assessment district boundary. It is widely recognized that the regional facilities provide non-flood related benefits such as recreational benefits, ecosystem benefits and water supply conveyance. In this analysis, the benefit of maintaining the 8361 Facilities

is also considered a general benefit because the maintenance is funded by the State General Fund, not by a special tax or assessment. These general benefits, and associated costs, are separated and excluded from the special benefit.

Special Benefit from Flood Risk Reduction:

Once the general benefits are excluded, the remaining benefit is associated with flood risk reduction. The regional facilities and the main river system are interconnected, and their benefit cannot be determined by isolating one from the other. The benefit allocation methodology recognizes that the special benefit from flood risk reduction is afforded by the whole system.

Special Benefit from Operation of the Regional Facility

The purpose of the regional facility is to reduce flood risk on the main stem of the river by diverting flow off the main stem into the regional facility. Therefore, the special benefit from the operation of the regional facility is provided to properties protected by facilities on the main stem system that are affected by diversions into the bypass.

With these definitions established, the benefit allocation methodology was developed based on the following approach:

- Step 1: Determine the system boundaries for the beneficiary analysis based on the upstream and downstream limits of the main river system affected by the operation of the regional facility. Identify all points of diversion from the main river system into the regional facility.
- Step 2: Determine the cost to maintain the regional facility and the amount of the cost allocated to the special benefit from operation of the regional facility:
  - A. Determine the percentage of general benefits and calculate the percentage of special benefit from flood risk reduction.
  - B. Perform a flow-balance analysis at the boundary limits determined in Step 1 to determine the percentage of flow diverted into the regional facility compared to the total inflow to the river system.
  - C. Determine the total cost to maintain the regional facility.
  - D. Calculate the cost allocated to the special benefit from operation of the regional facility by multiplying the total cost from Step 2C times both percentages from Steps 2A and 2B.
- Step 3: Apportion the cost allocated to the special benefit from operation of the regional facility to benefiting area.
  - A. Utilizing the latest CVFPP Flood Damage Analysis, identify all index points located on the main river system within the limits determined in Step 1 and the Impact Area(s) associated with each Index Point (see map of Index Points and Impact Areas in Appendix B).
  - B. Prepare a catalogue of the total Estimated Annual Damages (EAD) from the "Without Project" plan for each Impact Area identified in Step 3A. Do not include the EAD for Impact Areas that only have an Index Point located on an 8361 Facility. These Impact Areas collectively form the boundary of the assessment.
  - C. Calculate the proportionate share of EAD for each Impact Area by dividing the total EAD within the Impact Area by the sum of the total EAD for all Impact Areas within the boundary.
  - D. Apportion the cost allocated to the special benefit from operation of the regional facility (Step 2D) to each Impact Area based on its proportionate share of EAD.

#### Step 4: Quantify the SSJDD Assessment

1. The SSJDD Assessment levied within each Impact Area is equal to the cost apportioned to each Impact Area (Step 3D).
2. Impact Areas also protected by a regional facility that is not an 8361 Facility will receive a credit against the cost calculated in Step 3D, assuming that the LMA is already collecting an assessment from its landowners to maintain the regional facility. The credit is equal to the total cost to maintain the regional facility (Step 2C) that is located within the Impact Area. If the credit exceeds the cost for a particular Impact Area, this Impact Area would not be assessed.
3. There are many methodologies for apportioning the SSJDD Assessment to individual parcels within each Impact Area and the appropriate methodology will depend on the characteristics and diversity of parcels within the Impact Area. The test case that follows apportions the total assessment for each Impact Area based on the distribution of EAD between each land use type, and then to each individual parcel on an average rate basis. However, for an Impact Area that is largely agricultural, this methodology may skew the assessment to a small number of parcels with structural damages, and the more appropriate methodology would be to apportion on a per acreage basis.

Step 5: Distribute the SSJDD Assessment Revenue to LMAs responsible for maintaining the regional facility based on its pro rata share of the cost to maintain the regional facility.

- A. Calculate the percentage of the total O&M budget determined in Step 2 for each LMA.
- B. Multiply the percentage of the total O&M budget for each LMA times the total assessment revenue to determine the amount of the assessment revenue to be distributed to each LMA.

#### ***Test Case Evaluation***

The Sutter Bypass and Yolo Bypass were selected as test cases to evaluate the application of the benefit allocation methodology. These regional facilities reduce flood risk on the main stem of the Sacramento River and benefit lands adjacent to the Sacramento River that are located outside the boundaries of the LMAs that maintain the bypass levees. The application of the benefit allocation methodology is summarized below, and the results of the evaluation are presented in Appendix B.

#### **Step 1: Determine the system boundaries for the beneficiary analysis.**

System boundaries for the Sacramento River were established at locations where the flow and water surface were not affected by operations of the Sutter Bypass or Yolo Bypass.

For the Sutter Bypass evaluation, the boundary was established to capture the following conditions (see Figure 1):

- Sacramento River flow upstream of the Moulton Weir
- Moulton Weir diversion to the Sutter Bypass
- Colusa Weir diversion to the Sutter Bypass
- Tisdale Weir diversion to the Sutter Bypass
- Sacramento River flow upstream of the Fremont Weir





**Step 2: Determine the cost to maintain the regional facility and the amount of the cost allocated to the special benefit from operation of the regional facility**

Step 2A: For the purpose of testing the benefit allocation methodology, the general benefit associated with environmental habitat, recreation and the State-maintained 8361 Facilities was assumed to be 30%, leaving 70% of the benefit associated with flood protection.

Step 2B: A flow balance analysis was performed for the 1957 Design flows, the 100-yr event and the 200-yr event. The analysis determined that 75% of the system flow is diverted to the Sutter Bypass (Table A1) and 80% of the system flow is diverted to the Yolo Bypass (Table A2).

Step 2C: An inventory of levee reaches was prepared and aligned with the Impact Areas from the CVFPP Flood Damage Analysis. The total cost to operate and maintain the bypass levees was calculated based on a planning-level Operation, Maintenance, Repair, Replacement and Rehabilitation (OMRR&R) budget of \$46,000 per mile for rural levees. The cost to operate and maintain the bypass levees were estimated to be:

- Sutter Bypass (Table A3): \$3.83 million
- Yolo Bypass (Table A4): \$3.27 million

Step 2D: The cost allocated to the special benefit from operations and maintenance of the bypass levees (Table A5):

- Sutter Bypass = (1 - 30% general benefit) x (75% of system flow) x (\$3.83 million)  
= \$2.01 million
- Yolo Bypass = (1 - 30% general benefit) x (80% of system flow) x (\$3.27 million)  
= \$1.83 million

**Step 3: Apportion the cost allocated to the special benefit from operation of the regional facility to benefiting area.**

Step 3A: Index Points within the system boundaries and the associated Impact Areas were identified from the 2022 CVFPP flood risk analysis.

Step 3B: Estimated Annual Damages (EAD) for the “without project” plan were obtained from the 2022 CVFPP flood risk analysis for each Impact Area identified for the Sutter Bypass (Table A6) and Yolo Bypass (Table A7).

Step 3C: The proportionate share of EAD was calculated for each Impact Area based on the total EAD for all Impact Areas associated with each bypass system.

Step 3D: The cost allocated to the special benefit from operations and maintenance of the bypass levees (Step 2D) was apportioned to each Impact Area based its proportionate share of EAD.

**Step 4: Determine the SSJDD Assessment**

Step 4A: The potential SSJDD Assessment to be levied within each Impact Area was set to be equal to the cost apportioned to each Impact Area (Step 3D).



Step 4B: Impact Areas protected by both a Sacramento River levee and a bypass levee were identified. A credit was provided against the potential SSJDD Assessment equal to the LMA's cost to operate and maintain the bypass levees with the Impact Area. The proposed SSJDD assessments for each Impact Area for the Sutter Bypass (Table A8) and the Sacramento Bypass (Table A9) were calculated as the potential SSJDD assessment less any credit applied. If the credit was greater than the potential assessment, the proposed assessment was set to zero.

Sep 4C: The proposed SSJDD assessment for each Impact Areas was apportioned by land use based on the proportionate share of EAD for each land use within the Impact Area. Average property assessment rates were calculated for each land use on a per parcel, structure size or parcel size basis for each Impact Area associated with the Sutter Bypass (Table A10) and the Yolo Bypass (Table A11).

#### **Step 5: Distribute the SSJDD assessment revenue to LMAs**

Step 5A: The percentage of the assessment revenue was calculated based on the O&M budget of each LMA (Step 2).

Step 5B: The assessment revenue to be distributed to each LMA was calculated by multiplying the percentages from Step 5A times the total assessment revenue (Table A12 and Table A13).

#### **Conclusions**

In the opinion of the consultant team, the test cases resulted in a reasonable range of assessment rates for each land use. However, for certain rural Impact Areas, the assessment rates for Single Family Residential (SFR) properties were disproportionately larger than expected due to the concentration of EAD for SFR properties within the Impact Area. This could be corrected by providing flexibility in the methodology to apportion the assessment to properties within rural Impact Areas by parcel size (i.e., acreage) instead of by EAD. This Category met the established feasibility study criteria.

#### **Category 2 – Services that Provide Regional Benefits within a River Corridor**

Service Category 2 considered utilizing an SSJDD assessment to fund a CVFPB program to perform services that support or accomplish O&M activities that benefit all LMAs within a river corridor. Utilizing an SSJDD assessment to fund these regional activities could be more cost-effective as a single regional action and avoid duplicative effort and costs associated with the individual actions carried out by each LMA. Potential activities that support an entire region include, but are not limited to:

- Acquiring resource agency permits for the entire region to support O&M activities performed by all LMAs in the region;
- Establishing a bank of environmental mitigation credits for LMAs to apply towards individual projects or maintenance activities;
- Performing vegetation management throughout the river corridor; or
- Other actions that could be leveraged to support multiple LMAs regardless of their proximity to the river corridor.

While there was general support for the concept of regional activities, local flood control agencies within each region could not reach a consensus on specific activities for the CVFPB to carry out with local funding through an SSJDD assessment. The beneficiary analysis for this category has been advanced by conceptualizing that an agreeable list of activities has been developed and the annualized cost to perform those activities has been quantified.

### ***Benefit Allocation Methodology***

The services considered under this category benefit all properties within the region by supporting O&M activities performed by LMAs. However, these services do not have a direct impact on the potential severity or frequency of flooding upon individual properties. Therefore, the following benefit allocation methodology seeks to apportion benefit uniformly across all properties in the region.

Step 1: Define the services to be provided and establish the annualized cost required to finance the services.

Step 2: Apportion the annualized cost to benefiting properties uniformly using a per-parcel or per-acre charge.

### ***Test Case Evaluation***

The Feather River region was selected as the test case to evaluate the application of the benefit allocation methodology. The application of the benefit allocation methodology is summarized below, and the results of the evaluation are presented in Appendix C.

Step 1: Through discussions with local flood control agencies in the Feather River region, a defined set of services to be funded by an SSJDD assessment could not be established. Therefore, for the purpose of evaluating the benefit allocation methodology, an annual revenue between \$500,000 to \$1,000,000 per year has been assumed to adequately fund activities within the Feather River corridor between the Thermalito Afterbay and the confluence with the Sutter Bypass/Sacramento River.

Step 2: The inventory of parcels subject to flooding from the 2022 CVFPP flood risk analysis was used to identify the number of parcels by land use type for the impact areas in the Feather River corridor (Table C1). Based on the total parcel count, a charge of \$10 to \$20 per parcel will generate the assumed annual revenue required.

### ***Conclusions***

The test case has demonstrated that an SSJDD assessment would be capable of generating sustainable annual revenue to support regional activities within a river corridor for a nominal charge per parcel. However, further refinement of the services to be funded is needed to reconcile the cost of service against the required charge per parcel. This Category met the established feasibility study criteria.

### **Category 3 – Capital Improvements/Repairs within State Maintenance Areas**

State Maintenance Area's (MAs) are limited in their ability to collect sufficient revenue to fund large capital improvement projects. The existing legal authority restricts MAs from collecting an assessment for multiple years and rolling over any unused revenue to the following year to build up reserves to fund large capital improvement projects. Any excess revenue over the fiscal year's expenses must be incorporated in the subsequent year's assessment. Due to these constraints, large repair projects could require a significant one or two-year increase to the annual assessment on properties within the MA.

Category 3 Services considers utilizing the SSJDD to layer a multi-year assessment over an MA to fund a capital improvement/repair program, which could potentially result in a more affordable, consistent annual assessment for property owners. The potential benefits of utilizing an SSJDD assessment in lieu of a local agency led assessment also include absorbing the upfront costs into the annual assessment that are associated with establishing a local governance and implementing a Proposition 218 assessment.



### ***Benefit Allocation Methodology***

The standard benefit allocation methodology is based on the expected flood damage reduction to each benefiting property as a result of implementing the capital improvement project.

- Step 1: Perform pre- and post-project hydraulic analysis to determine depth of flooding for each property.
- Step 2: Calculate flood damages based on flood depths from Step 1 by using industry standards for determining land, crop and/or structure damages.
- Step 3: Calculate flood damage reduction by subtracting the post-project flood damage from the pre-project flood damage.
- Step 4: Apportion the local cost of the capital improvement project to each property based on its proportional share of total flood damage reduction.

### ***Test Case***

The town of Princeton is located on the west bank of the Sacramento River and situated 14 miles north of the City of Colusa. The town of Princeton was used as a test case to evaluate the potential of raising revenue for capital improvements through an SSJDD assessment to fund the local share of the preferred alternative plan considered in the Small Community Flood Risk Reduction (SCFRR) Study. The preferred alternative proposes to remediate existing SPFC levees for 1.85 miles and implement non-structural strategies for Princeton's wastewater treatment plant and properties on the fringe of the inundation area. The total project cost for the preferred plan was estimated to be \$21.5 million.

The financial feasibility of the preferred alternative was evaluated by determining the maximum annual assessment revenue that the community could afford to service the debt incurred to provide the local cost share of the project (see Appendix D). An assessment capacity analysis was performed based a simplified approach of calculating the relative flood damage rate per acre for each land use type, and then apportioning the assessment based on the relative damage rates and acres of each land use type. The results from this simplified approach are consistent with applying the methodology described above at the individual parcel level.

The first step of the capacity analysis applied the methodology to calculate the assessments rates required to generate a baseline assessment of \$100,000:

1. The pre-project hydraulic analysis prepared for the SCFRR Study was used to identify the pre-project flood depths of properties in the community. Post-project flood depths were not required because the preferred alternative eliminated flooding in the community.
2. Relative flood damage rates were calculated on a per acre basis using the average flood depth and property attributes of each land use type. Damage rates were based on structure depth-damage curves published by the US Army Corps of Engineers and crop damage rates published in the 2017 CVFPP.
3. Pre-project flood damages represented the amount of flood damage reduction, given the preferred alternative eliminated flooding in the community.

4. The baseline assessment of \$100,000 was apportioned to each land use type based on its amount of acreage and relative flood damage rate. Assessment rates were presented on a per-parcel and per-acre basis.

To determine affordability, the capacity of the community was assumed to be constrained by a maximum annual assessment of \$200 for single-family residential properties, which considers local economic factors and fees/assessments and is relative to similar assessments in neighboring counties (e.g. Sutter). The assessment was scaled accordingly, resulting in a maximum capacity of \$30,000 per year. Based on this capacity analysis, the SCFRR Study concluded that the maximum potential local funding for the preferred alternative was approximately \$500,000, or 2.4% of the total project cost.

### **Conclusions**

MAAs are generally located in nonurban areas and maintain levees that protect small communities and surrounding rural or agricultural areas, except for MA4 and MA9. Although an SSJDD assessment would overcome the assessment limitations of an MA, it would be impractical to implement an SSJDD assessment to fund capital improvements due to the limited assessment capacity of small communities. In the case of MA4 (West Sacramento) and MA9 (Sacramento), the local area flood control joint powers agencies have already implemented local assessments to complete comprehensive flood control projects. This Category did not meet the established feasibility study criteria.

### **Category 4 – Regional Assessment for Capital Improvement Programs to Support Small Communities**

During development of the Small Communities Flood Risk Reduction studies, it was determined that the local cost share for improvements would require very high assessments due to the limited benefit area of each small community. It was recommended counties explore developing a regional assessment district to fund a regional Capital Improvement Program to leverage a larger benefit assessment area to generate local funds to match State and Federal funding. However, it was recognized that the county and partnering agencies would need to address governance and implementation priorities before advancing a regional assessment.

This category of service was identified as a potential opportunity to utilize an SSJDD assessment as an alternative to a locally-led regional assessment, particularly when regional governance is not organized and/or neighboring communities reside in different counties that have not formed a regional governance entity (e.g. joint powers authority, like the Sacramento Area Flood Control Agency). However, consistent with the beneficiary analysis performed for Category 3, it is unlikely that an SSJDD assessment would provide a more cost-effective alternative in comparison to a locally-led regional assessment. This Category did not meet the established feasibility study criteria.

### **Category 5 – Financing Program for Nonstructural Flood Mitigation Measures**

Nonstructural flood mitigation measures are often a cost-effective solution to reduce flood risk in areas protected by the State Plan of Flood Control. The 2022 CVFPP Update encourages small communities to consider nonstructural actions in conjunction with structural improvements to reduce flood risk. In fact, many of the Small Community Flood Risk Reduction feasibility studies prepared since 2019 have identified alternatives that include non-structural flood mitigation measures, which provided a more cost-effective means to protect certain properties in lieu of expanding the footprint of structural improvements.

FEMA grant programs are available for nonstructural flood mitigation projects, but these grant programs typically require a non-federal match of 25% of the project cost. However, it is important to recognize that nonstructural solutions, such as raising structures above the floodplain or floodproofing structures within the floodplain, are improvements to private property, as opposed to structural improvements to a public facility. Local agencies utilizing assessment revenues to issue tax-exempt bonds are prohibited from using the proceeds from the tax-exempt debt issuance to improve private property, thus creating a barrier to accessing federal funding to implement non-structural flood mitigation measures.

This category evaluates establishing a new authority for the SSJDD to allow property owners to finance the non-federal cost share of nonstructural improvements and voluntarily assess themselves for repayment of financed costs.

### ***Property Assessed Clean Energy Program***

The Property Assessed Clean Energy (PACE) Program offers a model for an SSJDD program to finance non-structural flood mitigation measures. Authorized under the California Public Resources Code (§§26050 -26082), the PACE Program was established as a mechanism for homeowners and small business owners to finance the upfront costs to install energy efficiency or renewable energy improvements on private property. The fundamental elements of the PACE Program are:

- Local agencies administer a PACE Program within their jurisdiction, offering financing to property owners for qualifying energy efficiency improvements. The local agency ensures the property, the property owner and the proposed improvements meet minimum underwriting requirements. Once financing is approved, the local agency enters into financing agreements with the property owner and issues PACE bonds for the cost of the improvements and associated administrative and financing costs.
- The California Alternative Energy and Advanced Transportation Financing Authority administers the PACE Loss Reserve Program designed to mitigate the potential risk to mortgage lenders. The goal of this reserve program is to enable PACE financing by making mortgage lenders whole first for direct losses resulting from a PACE lien in a foreclosure or forced sale. Participation in the reserve program requires a local agency to demonstrate that its PACE Program meets the minimum underwriting criteria as established in statute and regulation.
- Property owners approved for PACE financing must agree to a voluntary contractual assessment on their property to repay the PACE bonds and all associated administrative and financing costs of the local agency. The assessment is paid annually over a fixed term and is collected through the property tax bills. PACE financing is attached to the property and is transferred with the property upon sale. This allows the initial decision maker to invest in the property without the consequence of the balance of the PACE financing becoming due upon sale of the property.

### ***Non-Structural Flood Mitigation Financing Program***

Drawing from the success of the PACE Program, the following framework for a Non-Structural Flood Mitigation Financing (NSFMF) Program was developed to assist local agencies with implementing non-structural flood mitigation measures.

#### Authorization

New legislation is required to authorize the creation of the NSFMF Program, its purpose and intended outcomes. The legislation would define the roles and responsibilities of the CVFPB, local

agencies and property owners; identify eligible projects; and establish underwriting criteria for property owners to be eligible to participate in the program. The legislation would authorize funding (likely from general obligation bonds) to initiate the program, but it would not need to appropriate money from the General Fund to pay off these bonds. All costs associated with implementing and financing approved projects, and administering the program would be passed to property owners for repayment through a property assessment.

In order to protect mortgage lenders against the risk of default and foreclosure, the legislation could potentially establish and appropriate funding to a NSFMF Reserve Program that would reimburse lenders for losses associated with:

1. The total amount of NSFMF assessment payments made while the lender is in possession of a foreclosed property; and
2. Losses incurred in a forced sale for unpaid taxes or special assessments, up to the outstanding balance of NSFMF payments.

Additional requirements related to bond underwriting and consumer protection are anticipated to be added during the legislative review process. Once signed into law, the CVFPB would need to develop and adopt regulations through the Office of Administrative Law's rulemaking process for administering the program, approving eligible projects, issuing bonds to finance the nonfederal share of approved project costs, and levying assessments for repayment of debt financing. The CVFPB would then develop NSFMF Program guidelines, outlining the process and requirements for local agencies to apply for financing through the NSFMF program.

#### Eligibility Requirements

Projects would likely need to meet the following criteria to be eligible for financing through the NSFMF Program:

1. Flood risk mitigation activities would need to be eligible for funding through FEMA's Hazard Mitigation Assistance Programs;
2. Sponsored by a local agency eligible to receive FEMA grant funding;
3. Consistent with priorities of the Central Valley Flood Protection Plan and the State Systemwide Investment Approach; and
4. Located within the boundary of the SSJDD.

In addition to these project criteria, the underlying property and property owner would need to meet minimum underwriting criteria stated in the authorizing legislation or established in the adopted regulations.

#### Application Process Framework

Applications for financing the nonfederal share of nonstructural flood mitigation projects through the NSFMF Program would be submitted by local agencies to the CVFPB. The local agency could submit one application for a group of projects that are part of a comprehensive flood risk reduction project, or the agency could apply for individual projects at the request of property owners. Property owners would need to acknowledge and agree to the placement of a voluntary contractual assessment on the underlying property to repay the cost of the project plus all associated administrative and financing costs.

The local agency would be responsible for coordinating with property owners and the California Office of Emergency Services (CalOES) to apply for FEMA funding prior to applying for financing through the NSFMF Program. Local agencies could choose, but not be required to provide financial assistance to property owners to defray upfront administrative and underwriting costs. Final approval for financing would be contingent on the award of FEMA funding.

The CVFPB would be responsible for evaluating applications to ensure the project activities, the sponsoring local agency, the recipient property owner, and the underlying property all meet the requirements of NSFMF Program. The CVFPB would manage the program fund and the reserve fund. This Category met the established feasibility study criteria.

## 6. Implementation Analysis

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The following actions are required to resolve current barriers to implementing an SSJDD assessment.

- Continue to engage with local agencies to further refine the categories of service investigated in this study. Collaboratively develop assessment formation guidelines that engage LMAs in the decision-making process throughout implementation.
- Pursue legislation to expand the purpose and intended use of an SSJDD assessment to align with CVFPP objectives as exemplified by the Categories of Service, and to revise the landowner approval requirements to be consistent with the requirements for local agencies under Prop 218 (Article XIII D of the California Constitution). Additional revisions may be required for the administrative procedures to be consistent with current laws and regulations.
- Analyze the level of effort and cost for the CVFPB to implement and administer an assessment program for the categories of service supported by LMAs. Include an evaluation of performing these services with agency staff or by contracting for these services. Determine whether to recover these costs, either separately or combined, by inclusion in the assessment or the agency's annual operating budget.

Once a specific service has been agreed upon and chosen to be funded by an SSJDD assessment, the implementation guidelines would be followed, and the proposed assessment brought to a landowner vote for approval. The assessment formation guidelines will identify the specific actions required, but are expected to include the following procedures:

1. LMAs that encompass the lands benefiting from the specified service will petition the CVFPB to consider imposing an assessment under the SSJDD authority to fund the services requested by the LMAs.
2. The CVFPB will direct the preparation of a report to detail the specific activities and associated cost to provide the proposed service, and identify the benefits provided by the proposed service. The report will provide an assessment methodology that quantifies the benefits and apportions the costs of the proposed service to properties in proportion to the benefit received.
3. Upon review of the report, LMAs may elect to accept the report or withdraw their petition to the CVFPB.
4. If the report is accepted by the LMAs, the CVFPB will initiate the notice, protest and public hearing procedures. Notices will be mailed to property owners along with an explanation of the manner to document their approval of, or opposition to, the proposed assessment.
5. The CVFPB will conduct a public hearing to afford property owners the opportunity to address the Board regarding the proposed assessment.
6. Following the public hearing, if the percentage of landowners approving the assessment is found to exceed the required minimum threshold, the CVFPB may approve the formation of the assessment and initiate the process for levying the assessment.

## 7. Findings and Recommendations

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### Summary of Findings

Based on the analyses performed and feedback from local flood control agencies, the following conclusions have been made regarding the feasibility of utilizing the SSJDD Assessment District to provide funding for system-wide improvements and operation and maintenance of associated flood control structures and levees within the State Plan of Flood Control (SPFC).

#### ***Finding 1: New legislative authorization needed***

The existing SSJDD assessment authority is strictly limited to funding capital improvements identified in the California Debris Commission's plans for reclamation and flood control, which is antiquated and no longer relevant to objectives of the CVFPP. In order to utilize the SSJDD Assessment District to fund priorities of the SSIA, new legislation is needed that clearly articulates the intended purpose and procedural requirements, separate and distinct from the existing authority.

#### ***Finding 2: Two-thirds Landowner Approval Required Under Existing Authority***

At the onset of this Study, the existing requirement for written consent from both a super majority of landowners and assessable lands was recognized as a major obstacle to reutilizing the SSJDD Assessment District to fund investments in the State Plan of Flood Control. Revisions that are consistent with the majority protest requirements of Proposition 218 for local agency special benefit assessments (CA Constitution Article XIII D) seem appropriate, as they are commonly understood and present a reasonable, albeit high bar for imposition of property assessments.

#### ***Finding 3: Local Funding Source***

The 2022 update to the Investment Strategy acknowledged that SSJDD Assessment revenues are considered a local source of funds. All assessment revenue must be used within the area of benefit and cannot fund CVFPB administration activities except those directly related to the assessments. This was also raised as an issue by local flood control agencies during the identification of services to include in this Study, with LMAs emphasizing that there must be a clear advantage for utilizing an SSJDD assessment to fund a service that could otherwise be funded through a local special benefit assessment. Importantly, an SSJDD assessment may impact the ability of LMAs to levy assessments for local needs. With that in mind, LMAs would need to request that the CVFPB initiate SSJDD assessment formation activities.

#### ***Finding 4: Beneficiary Analysis***

The beneficiary analyses performed for each potential service to be funded by an SSJDD assessment demonstrated the technical feasibility to develop an assessment methodology for apportioning the assessment to lands in proportion to the benefit received. The complexity of each assessment methodology varied based on the scope of the services to be provided. The assessment methodologies were generally accepted by interested parties.

#### ***Finding 5: Assessment Formation***

A general framework for implementing an SSJDD assessment was developed for further refinement in conjunction with the development of new legislative authority. Successful formation of an SSJDD assessment is predicated on the ability to communicate to landowners both the need for the assessment (services and costs) and the benefits it provides. Notwithstanding the need to work

collaboratively to define the services and associated benefits to be funded by an SSJDD assessment, local flood control agencies are better positioned to communicate with landowners and gauge their interest and understanding of the assessment. Therefore, the final decision to initiate the formation proceeding should be made by the local flood control agency once it believes there is sufficient landowner support. When no local flood control agency exists, the final decision to initiate the formation proceeding can be recommended by the local community once it believes there is sufficient landowner support.

## **Recommendations**

Based on these findings and the conclusions drawn from the results of the analyses performed, the following recommendations are provided to advance the potential implementation of an SSJDD Assessment District.

### ***Recommendation 1: Consider Advancement of Service Category 1***

Interested parties generally supported the beneficiary analysis approach for assessing urban areas that benefit from maintenance of non-8361 facilities. The CVFPB should continue to work with the local flood control agencies to further develop this service. As an example, the Upper Yolo Bypass may be an ideal study area. Near-term actions might include:

- Update the beneficiary analysis to address maintenance of levees and drainage facilities on the tributaries draining into the bypass that are impacted or caused by construction of the west bypass levee.
- Update the analysis to reflect actual costs incurred to maintain the Yolo Bypass facilities upstream of Freeport.
- Determine the appetite of urban LMAs to support an assessment for Yolo Bypass benefits.
- Evaluate the potential use of an SSJDD assessment to provide funding to support efforts to expand the Yolo Bypass.

### ***Recommendation 2: Consider Advancement of Service Category 2***

The beneficiary analysis provided promising results for generating an annual funding stream that could be used to address challenges to maintaining facilities that are common to all LMAs within a river corridor/region. Further engagement is needed to determine the specific services that LMAs would support for inclusion in a regional assessment.

### ***Recommendation 3: Consider draft legislation for new/amended SSJDD Assessment District authorization***

The existing legislative authority is limited to implementation of the plans for reclamation and flood control contained in the CA Debris Commission Report approved on December 27, 1911, and as amended in 1925. New comprehensive legislation is needed to authorize an assessment to fund system-wide improvements and O&M activities within the State Plan of Flood Control, consistent with the CVFPP. The principal elements of the new legislation should include:

1. Repeal or amend the existing assessment authority.

The proposed legislation could amend or entirely remove Chapter 5 – Assessments (§§ 8750 – 8774) and replace it with the new authorizing text. However, if the context of the existing authority needs to be retained, the proposed legislation would add a new chapter and distinguish the new authority from the existing authority provided in Chapter 5.



2. Aligning the new SSJDD assessment authority with the CVFPP Investment Strategy.

The new legislative authority should provide flexibility to accommodate the evolution of regional priorities in the CVFPP investment strategy. The legislation should broadly define the necessity, purpose and intended use of an assessment, but establish specific requirements for narrowly defining the services, benefits and associated costs when proposing a new assessment.

The authorization should acknowledge that the assessment is a source and use of local funds administered at the state level for use within the benefitting area and is not intended to supplant existing state obligations or commitments, nor reduce the need for future state investments. The authorization should not preclude the potential for funding projects and O&M within small/rural communities, despite concerns about a reasonable ratio between assessment revenues and cost for administration.

3. Assessment District Boundaries

The boundary of a proposed assessment should include only those parcels that benefit from the services or improvements. Each assessment district shall be located within the boundary of the SSJDD, consistent with the existing authority. The categories of services evaluated in this study benefit lands within the existing SSJDD boundary and no modification of the boundary should be necessary. However, should an assessment be proposed for a service or improvement that benefits lands outside the existing SSJDD boundary, expanding the SSJDD boundary could be incorporated into the landowner approval for the proposed assessment.

4. Establishing notice, hearing and protest requirements consistent with Proposition 218.

Along with the acknowledgement that the assessment is a source of local funds, landowners that would be subject to an SSJDD assessment should be afforded similar rights for noticing, hearing and protest procedures that would otherwise be required of local agencies by Proposition 218 (specifically Article XIID of the California Constitution and Government Code §§53750 – 53753). These requirements include a minimum 45-day notice and balloting period, concluded by a public hearing to receive written or oral testimony. After conclusion of the public hearing, ballots that have submitted are to be tabulated, weighing each vote in favor or opposition by the amount of the proposed assessment represented by the ballot. If the weighted votes in favor of the assessment exceed those in opposition, a protest does not exist and the CVFPB could proceed with formation of the SSJDD assessment.

Once the new authorizing legislation is drafted, additional legal review will be required to confirm that there are no ambiguities or conflicting statements with Chapters 1 through 4 (§§8520 – 8742).

- Confirm that the provisions of Chapter 7 (§§8935 – 8991) do not apply to the new authorization for the SSJDD assessment.

***Recommendation 4: Consider Feasibility Study for Non-Structural Flood Mitigation Financing Program***

The CVFPB should evaluate whether it is within its authority to assist local agencies and private property owners with financing the non-federal share of non-structural flood mitigation measures. If the CVFPB determines that it is within its authority to provide financial assistance to promote implementation of non-structural measures that are consistent with the priorities of CVFPP, it should investigate the feasibility of establishing an NSFMP Program. At a minimum, the scope of the feasibility study should include:

- An estimate of the total potential financing needed throughout the Central Valley and a projection of expected participation on an annual basis;
- An evaluation of the administrative requirements and associated program costs;
- An analysis of the expected underwriting requirements;
- A review of existing legislative authorities for similar programs, such as the PACE program, and preparation of an outline of the legislation required to authorize an NSFMF Program; and
- A determination of whether an effective NSFMF Program would be financially sustainable and feasible to administer.

Based on the results and recommendations from the study, the CVFPB would determine whether to continue to develop the program.