

Continuance in the Federal Program

The Rural LMA Work Group (WG) was established in late 2012 with the purpose of serving as a forum for the California Central Valley Flood Control Association to identify problems that are unique to rural areas and seek solutions for inclusion in the Regional Flood Management Plans. The Rural LMA WG identified eleven topics of interest and has prepared a paper describing each topic from the perspective of the Rural LMA WG. These papers continue to be developed by the Rural LMA WG and are therefore subject to revision.

Topic Statement

Continued participation in the Federal Program provides benefits for planning and implementation of major repair and/or improvement projects as well as benefits during and following emergency events. However, deauthorization, or removal from the Federal program through other means, may provide its own benefits. A weighing of advantages and disadvantages should take place to determine if deauthorization should be pursued and if so how and where (i.e., large or small systems, rural or urban systems, etc)

Description of Topic

The levees comprising the Sacramento River Flood Control Project (SRFCP) and the Lower San Joaquin River and Tributaries Project (LSJR&T Project) are referred to as “Federal Project” levees as they are part of a congressionally authorized project. While the State of California is the non-Federal sponsor of the SRFCP, the project remains subject to Federal regulations as agreed to in cost-share agreements; Operation, Maintenance, Repair, Replacement, or Rehabilitation (OMRR&R) agreements; or other binding documents.

The primary benefits of being part of the Federal program (i.e., a congressionally authorized project) are the cost-sharing of planning studies and construction of projects, and non-cost-shared rehabilitation assistance during and after declared emergency events. Participation in a planning and potential construction of a Federal project can be difficult for rural LMAs as the cost of levee upgrades are expensive and the benefits (i.e., damages) often do not outweigh the high costs. As a result, obtaining a “Federal Interest” is difficult and subsequent funding recommendation from the Office of Management and Budget is even more difficult as it typically requires a benefit to cost ratio of greater than 3.0. Cost-shared assistance during and after declared emergencies is available to both project and non-project levees if the LMA has requested and received eligibility in the PL 84-99 Rehabilitation and Inspection Program (RIP). The RIP also requires a minimum 1.0 benefit to cost ratio, but because repairs are generally smaller as compared to major levee system upgrade projects, history indicates that this requirement can be met. Secondary benefits have in the past included the Corps’ certification of projects to support local communities in obtaining FEMA accreditation for the 100 year event. However, based on review of new guidelines (EC 1110-2-6067) published by the Corps it is unlikely that this benefit will be realized as was in the past.

In accordance with commitments made in applicable cost-sharing agreements, the non-Federal sponsor’s primary responsibility following construction of the project is Operation and Maintenance (O&M) of the project under 33 CFR 208.10 through compliance with the O&M Manual provided by the USACE at the time of project completion. The USACE can adapt and/or revise existing regulations, create new regulations, or modify O&M

Manuals as tools, technology, and science improve over time. Generally, the guiding document remains the O&M Manual, although recent updates of regulations by the USACE will likely require a modification to O&M manuals and thus O&M practices.

The USACE enforcement position and regulation concerning vegetation on levees has changed and the USACE has issued new guidelines reiterating the removal of most vegetation on levees except in cases where it can be demonstrated that the vegetation is not a threat to levee integrity. The USACE's guidelines, which are in conflict with the O&M manual for the SRFCP and LSJR&T Project, have acted as a catalyst for discussions on eligibility in the PL 84-99 RIP and the viability of remaining a Federal project as it would be extremely difficult to obtain the necessary environmental permits and the necessary funding to comply with the removal requirements.

Removal of projects from the Federal program would almost certainly require a congressional act. USACE has authority to conduct deauthorization studies, which are submitted to Congress, but funding and processing of these studies would be uncertain. USACE deauthorizations are uncommon. Independent from the USACE deauthorization project, non-Federal sponsors, or others, could pursue their own congressional legislation to remove the project from the Federal program.

If the project was deauthorized and removed from the RIP, it could be eligible for assistance for both flood fighting and rehabilitation through the Federal Emergency Management Agency (FEMA) or National Resources Conservation Service (NRCS) programs if Congress indicated so. Flood control works that are eligible for USACE's RIP program, either Active or Inactive, are ineligible for assistance from FEMA for emergency repairs and permanent repairs.

If the project were no longer in the Federal program, permitting requirements under 33 USC 408 would be eliminated except in cases where an alteration could have an effect on an adjacent, or neighboring, Federal project. Permitting under other Federal and State authorities would likely be required.

Relevance to the RFMP

As part of the RFMP, the regions should consider if the State and local communities should pursue congressional deauthorization of portions of the SRFCP and LSJR&T Project. Consideration should be given to the ability of LMAs and the State to meet standards which would provide emergency and rehabilitation assistance, the ability to fund levee improvement projects without Federal cost-share dollars, and liability for damages in the event of failures. Further consideration should be given for evaluating where levees may not be necessary (e.g., levees near the San Joaquin River National Wildlife Refuge) and could altogether be removed from the Federal program.

DRAFT Suggested Language to Include in the RFMP

The levees comprising the [select one: Sacramento River Flood Control Project (SRFCP) and the Lower San Joaquin River and Tributaries Project (LSJR&T Project)] are referred to as “Federal Project” levees as they are part of a congressionally authorized project. While the State of California is the non-Federal sponsor of the project, the project remains subject to Federal regulations as agreed to in cost-share agreements; operation, maintenance, repair, replacement, or rehabilitation (OMRR&R) agreements; or other binding documents. The primary benefits of being part of the Federal program (i.e., a congressionally authorized project) are the cost-sharing of planning studies and construction of projects, and non-cost-shared rehabilitation assistance during and after declared emergency events. Cost-shared assistance during and after declared emergencies is available to both project and non-project levees if the Local Maintaining Agency has requested and received eligibility in the PL 84-99 Rehabilitation and Inspection Program (RIP). Secondary benefits have in the past included the Corps’ certification of projects to support local communities in obtaining FEMA accreditation for the 100 year event.

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In evaluating potential actions to be recommended as part of this RFMP, the Working Group gave some consideration towards the potential for deauthorizing portions of the Federal flood control system. The Working Group identified some levees that while providing critical flood protection, could benefit from being removed from the Federal program, while remaining in the State Plan of Flood Control. A description of these levees is below: ...