

Rural LMA Topic Sheet

Encroachments

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

Undocumented encroachments and non-compliant encroachments present safety and legal challenges for LMAs.

Description of Topic

Undocumented encroachments, permitted or not, and documented, non-compliant encroachments present safety and legal challenges for LMAs. If an LMA or the State cannot produce documentation of an encroachment, that encroachment is flagged during inspections as an unpermitted encroachment and therefore unacceptable. If an encroachment is not in compliance with its permit, it is also flagged as unacceptable. Depending on the type of encroachment, either can cause an entire levee system to lose eligibility under PL 84-99. Of particular concern are encroachments representing a risk to levee integrity. Further, should a failure occur due to a known encroachment listed as unacceptable or one that simply lacks documentation of compliance, could the LMA be liable?

Here are encroachment scenarios presenting a challenge:

- Not permitted,
- Legacy encroachments lacking documentation (i.e., not specifically or thoroughly documented in as-builts)
- Permitted by CVFPB, no concurrence from USACE;
- Permitted by CVFPB with concurrence from USACE, not in compliance with permit terms;
- Permitted by CVFPB with concurrence from USACE, in compliance with permit terms but not documented; or
- Not permitted, but constructed by the USACE as documented in the as-builts or O&M manual.

Resolution of these scenarios can range from straightforward to complex. For example, for encroachments which are not complex and can be shown to not impair the project, a framework or process, agreed to by the CVFPB and USACE, could be established for retroactive permitting of the facilities. This could be used for several of the scenarios. For encroachments not meeting the permit terms or for encroachments that lack permits and should not be present, a more complex process, such as the current enforcement process, would be used.

Regardless of the resolution, documentation is the first phase of determining if an encroachment is permitted and what conditions those permits included. USACE and CVFPB have undertaken an effort to research historical

and current files to build a database of encroachments. However, this database is not yet widely available to LMAs nor is it complete. The database is a good start, but more attention should be given to locating documents and files. LMAs should also participate by researching their own files and providing permits to the CVFPB or USACE for inclusion in the database, and by maintaining their own repository of encroachment permits, compliance documentation, and maintenance activities related to encroachments.

In addition to typical encroachments owned by an individual or company, there are some encroachments that exist as a result of the levee system itself. These encroachments, primarily interior drainage ditches adjacent to the landside levee toe, retaining walls, rip-rap, and pipes, present a unique set of problems as they often pre-date permits, and documentation can be inconclusive. Some of these encroachments may be found in as-builts, but others are not seen in as-builts or the as-builts cannot be found. These encroachments are typically maintained by the LMA, but many have either exceeded their lifespan and/or need improvements to meet current standards.

Relevance to the RFMP

The RFMP should encourage and emphasize the need for continued research of existing encroachment permit documentation including as-builts and levee logs. The goal of the process should be to 1) remove unnecessary facilities; 2) bring necessary facilities into compliance; and 3) permit all encroachments with clearly identified responsible parties and specific conditions of compliance. Further the RFMP should present the below ideas to help prevent similar issues from occurring in the future:

- Recommend that the State adopt a standard noticing procedure to remind encroachment owners that they must maintain their encroachments in accordance with the permit terms and current standards.
- Require encroachment owners provide annual records of maintenance, inspection, repair, and replacement demonstrating compliance with permit terms and current standards to the LMA.
- Establish a process where LMAs report annually to the CVFPB on any violations as well as any efforts the LMA has taken to resolve issues prior to being reported for action by the CVFPB. This would not prevent the LMA from doing the same outside an annual cycle for critical concerns.

In the case of those encroachments believed to be necessary for the functioning of the system (i.e., landside drainage ditches, erosion protection, or other facilities), the CVFPB should analyze the necessity of the facility and, where the facility is deemed necessary to accommodate the levee system, the State provide a funding program to address required upgrades, improvements, and/or documentation of the facility in the project as-builts.