

Draft

GUIDELINES
Flood System Repair Project

**Authorized Under
the Disaster Preparedness and Flood Prevention Bond
Act of 2006 (Proposition 1E)
Flood Control, River and Coastal Protection Bond Act**

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Acronyms and Abbreviations

Term	Description
CEQA	California Environmental Quality Act
CFR	Code of Federal Regulations
CWC	California Water Code
CVFPB	Central Valley Flood Protection Board
DWR	Department of Water Resources
FSRP	Flood System Repair Project
LMA	local maintaining agency
NEPA	National Environmental Policy Act
O&M	operations and maintenance
SPFC	State Plan of Flood Control
USACE	U.S. Army Corps of Engineers
USC	U.S. Code

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1.0 INTRODUCTION

1.1 Goals and Objectives

The passage of Proposition 1E, the Disaster Preparedness and Flood Prevention Bond Act of 2006 and Proposition 84, the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 authorized the Department of Water Resources (DWR) to make funds available for, among other things, projects for repair, rehabilitation, reconstruction, or replacement of levees, weirs, bypasses, channels, and other facilities of the State Plan of Flood Control (SPFC) (See Section 1.2). The Central Valley Flood Protection Board adopted the 2012 Central Valley Flood Protection Plan (CVFPP) on June 29, 2012. The CVFPP is a critical document to guide California's participation in managing flood risk along Sacramento and San Joaquin River Systems. The CVFPP proposes a State Systemwide Investment Approach (SSIA) for sustainable integrated flood management approach in the areas protected by State Plan of Flood Control (SPFC) facilities. Under the Flood System Operation and Maintenance Program, the SSIA sets the near-term priority for implementing repair of erosion sites, known and documented critical problems, and providing all weather access for effective emergency response capability. The Department has developed the Flood System Repair Project (FSRP) to assist the local maintaining agencies (LMAs) responsible for maintaining facilities of the SPFC. For the purposes of these guidelines, LMAs may include levee districts, cities, counties or other public agencies with maintenance responsibilities for SPFC facilities, as well as maintenance areas where the state has maintenance responsibilities. The FSRP is funded from a portion of funding authorized for the evaluation, repair, rehabilitation, reconstruction, or replacement of levees, weirs, bypasses, and facilities of the SPFC under § 5096.821 of the Public Resources Code.

To ensure that funds are spent in accordance with Proposition 1E requirements, and are consistent with the State System-Wide Investment Approach detailed in the 2012 Central Valley Flood Protection Plan, the FSRP incorporates prioritization of funded projects to focus on repair of performance problems that are critical, serious, or that may impede flood fight capabilities. Critical problem is defined as damage to a flood protection facility that would reasonably be expected to fail during the course of a single flood season or single high water event. Serious problem is defined as damage to a flood-protection facility such that the facility is approaching a state of failure but is not likely to fail during the next flood season or single high-water event. The FSRP also provides for proactive repairs that lead to sustainable operations and maintenance practices. Proactive repairs will address small damages that may not qualify as critical or serious, but are worsening rapidly, have the potential to become critical, and that can be designed and constructed by the LMA.

Proposition 1E requires that the funds be expended while:

- Securing the maximum feasible amounts of federal and local matching funds and ensuring prudent and cost-effective use of the funds to the extent that doing so does not prohibit timely implementation of disaster-preparedness and flood-prevention projects.
- Prioritizing selection and project design to achieve maximum public benefits from the use of the funds.

In support of these principles, the objectives of the FSRP are:

- Repairing critical problems to SPFC facilities in partnership with the LMAs.
- Helping LMAs to proactively repair small erosion sites that could deteriorate to pose a critical threat which are within the overall scale of the LMAs' maintenance program and can reasonably be performed by the LMA, but fall outside of activities considered to be routine maintenance as defined in Appendix A.

Repair of critical problems is needed to advance the primary 2012 Central Valley Flood Protection Plan goal of improving flood risk management. The intent of the repair of proactive sites under the FSRP is to assist LMAs in preventing these problems from becoming critical, thus reducing repair costs and enhancing the long-term sustainability of O&M programs.

1.2 FSRP Definition

The FSRP applies to projects involving repair of damaged SPFC facilities maintained by LMAs or by DWR, which may include levees, channels, and related flood control structures as further defined in Section 3.2. An LMA sponsor for an FSRP repair project must be a levee district, reclamation district, or other agency with maintenance responsibilities for SPFC facilities that is qualified to contract with DWR. A joint powers authority or other entity created and funded to design and implement flood control repairs or improvements may participate as a sponsor provided the LMA representing the SPFC facility is a member of the joint powers authority or other entity, and accepts responsibility for maintaining the future facility to be repaired.

Working collaboratively with LMAs, DWR will first identify potential repair sites by:

- Developing a list of past performance problems on SPFC facilities from the available inspection and reporting programs.
- Collecting engineering data and additional information from LMAs and other relevant sources to classify past performance problems sites by severity of damage and potential impact to lives and property.
- Screening potential repair sites against administrative criteria to eliminate repairs that are inconsistent with the State System-Wide Investment Approach under the 2012 Central Valley Flood Protection Plan, or that may be addressed under other state, local or federal programs.

DWR will prioritize the screened sites and notify LMAs of sites that are eligible for repair. If an LMA agrees to sponsor an eligible repair site, DWR will enter into a Project Agreement with the LMA which will define the roles and responsibilities of the LMA and DWR and the cost-share provisions (Appendix B). In the case of repairs to SPFC facilities maintained by DWR, DWR will perform the repairs on behalf of a maintenance area.

Subject to a Project Agreement and DWR's approval, LMA or DWR will prepare environmental documentation, collect engineering data, provide design services, obtain required property rights, and procure, execute, administer, and manage the construction contract with DWR review and oversight. DWR will be responsible for implementing projects

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at facilities identified in California Water Code (CWC) § 8361 and those maintained by DWR pursuant to CWC 12878 et seq.

1.3 About These Guidelines

These draft FSRP Guidelines (draft Guidelines) govern the process by which DWR reviews and selects FSRP repair projects to fund, and the resulting implementation process. Where a project receiving FSRP funding is governed by specific laws, these draft Guidelines only apply to the extent they are consistent with those specific laws. These draft Guidelines concern the site eligibility and selection process that will be used to disburse funds, the agreements that the LMA sponsors will be required to sign, and the way in which these agreements will be administered. These draft Guidelines may be amended as described in Section 6.2.

1.4 Funding

Up to \$150 million Proposition 1E funds may be allocated to the FSRP through fiscal year 2017. FSRP repair projects will be cost-shared with eligible LMA sponsors. Projects will be DWR-directed as defined in these draft Guidelines. At its discretion, DWR may also opt to select projects by competitive solicitation under a project solicitation package process; however such a process would be defined at a later date under separate guidelines or revisions to these draft Guidelines.

The minimum state cost-share percentage will be based on the latest edition of DWR's Division of Flood Management Guidelines For Establishing Local Agency Cost-Sharing Formulas for Flood Programs and Projects (DWR Cost-Share Formula) (DWR, 2010). The FSRP includes additional cost-share enhancements based on the LMA's O&M and emergency response preparedness performance, as described in Section **Error! Reference source not found.** The state cost-share percentage for FSRP repair projects will range from 50 percent to 90 percent based on application of the DWR Cost-Share Formula and the additional FSRP cost-share enhancements. The maximum state cost-share amount per project will be \$5,000,000.

Implementation of any or all FSRP repair projects is subject to future funding restrictions. FSRP eligibility criteria, requirements, or procedures may be changed, substituted, or terminated, and other criteria may be added at DWR's discretion. Such changes may be required as a result of state or federal legislative or administrative actions (i.e., actions associated with passage of the annual state budget or other legislation).

1.5 FSRP Limitations

The FSRP is limited to facilities of the SPFC maintained by LMAs or by DWR, as defined in Public Resources Code § 5096.805(j):

...the state and federal flood control works, lands, programs, plans, conditions and mode of maintenance and operations of the Sacramento River Flood Control Project described in Section 8350 of the Water Code, and of flood control projects in the Sacramento River and San

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Joaquin River watersheds authorized pursuant to Article 2 (commencing with Section 12648) of Chapter 2 of Part 6 of Division 6 of the Water Code for which the board or the department has provided the assurances of non-federal cooperation to the United States, which shall be updated and compiled into a single document entitled "The State Plan of Flood Control."

In addition, the FSRP cannot be accessed to fund routine maintenance activities performed under an LMA's O&M program or repair projects that increase a facility's level of protection to a higher design level of performance or original design intent. These limitations are described in greater detail in Section 3.3.

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2.0 FLOOD SYSTEM REPAIR PROJECT IMPLEMENTATION PROCESS

This section describes the process by which DWR will implement the FSRP. Section 2.1 summarizes the process by which potential FSRP sites are identified, classified, and prioritized. Section 2.2 describes the process by which DWR will solicit sponsorship by LMAs and negotiate Project Agreements with the sponsoring LMA. As the overarching objective of the FSRP is to fund repairs, for facilities maintained by LMAs, the process has been designed to include close collaboration and to address critical past performance problems while supporting broader 2012 Central Valley Flood Protection Plan goals. For facilities maintained by LMAs, funding and implementation of repair projects under the FSRP are contingent upon the execution of a Project Agreement between DWR and an eligible LMA sponsor. Figure 2-1 summarizes the process. The repair of facilities maintained by DWR (identified in CWC § 8361 and pursuant to CWC § 12878 et seq) will be implemented by DWR and will not require Project Agreements. Provisions for Project Agreements are provided in Appendix B.

2.1 FSRP Site Selection Process

2.1.1 Compilation of Potential Repair Sites

On an annual basis, the Department will compile a list of potential repair sites from available sources, which may include the following:

- Annual inspections of SPFC levees, structures, channels, and other flood management facilities performed in accordance with the Code of Federal Regulations (33 CFR Section 208.10) and documented in an annual Inspection Report of the Flood Control Project Maintenance and Repair.
- Annual inspections or periodic inspections conducted by the USACE under its Levee Safety Program.
- Information provided by LMAs
- Flood facility assessments conducted by the Department under other programs, most notably the urban and non-urban levee evaluations being performed by the Department in support of the Central Valley Flood Protection Plan.

The Department will coordinate with LMAs to gather available information regarding potential repair sites. LMAs are encouraged to work with FSRP management to ensure that known sites have been captured as part of the compilation step. If a new potential repair site is identified after the compilation step, the Department will separately evaluate the site for potential addition as an eligible repair.

Data from available sources will be examined for past performance problems. The past performance problems will be reviewed to eliminate instances related to general compliance or routine maintenance.

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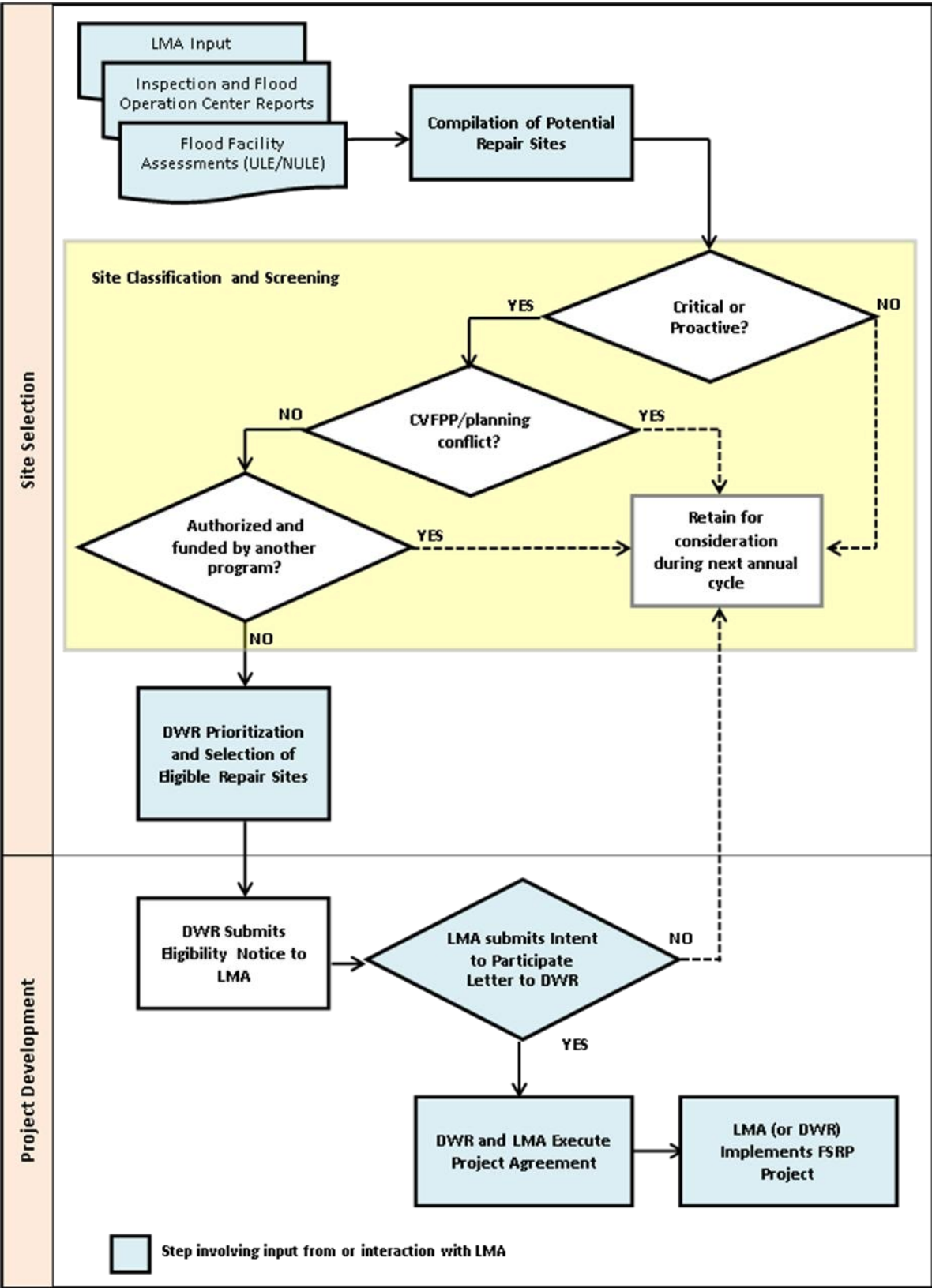


Figure 2-1. FSRP Process.

2.1.2 Classification of Potentially Eligible Repair Sites

2.1.2.1 Critical or Serious Site Classification

DWR will review available engineering data, coordinate with LMAs to conduct reconnaissance-level field assessments, and classify sites by severity of damage as critical, serious, or other. Each classification has an individual ranking method that will determine whether the site represents critical or serious problem as defined in Appendix A.

Sites classified as critical, based on these definitions, will be identified as potentially eligible sites. Sites will be prioritized based on maximum flood risk reduction. If other factors are deemed equal, critically damaged facilities will receive funding in preference to seriously damaged facilities.

Sites not found to be critical will not be eligible, but may be retained for reassessment during subsequent evaluation and ranking under the FSRP. For each potentially eligible critical FSRP site, DWR will prepare a summary alternative repair analysis, including:

- Analysis of a levee setback as appropriate.
- A preliminary estimate of all costs, opportunities, and constraints.
- A real estate and environmental permitting needs assessment.
- A determination of the affected area in the event of a failure of the facility.
- An estimate of benefits.

An evaluation of these factors will result in a list of potentially eligible repair sites, with:

- Preferred repair alternatives.
- An engineer's pre-design estimate.
- A project schedule and budget.
- A summary of needs for real estate and environmental and administrative permits.

The scope of this effort is intended to support determination of site eligibility and the prioritization of repair sites. For sites that proceed to a Project Agreement, the LMA or DWR, per the terms of the Project Agreement, will be responsible for the design and permitting needs as described later in these draft Guidelines.

2.1.2.2 Proactive Site Classification

Each potentially eligible FSRP site is also examined to determine whether its condition qualifies for construction as a Proactive Repair project, which is addressed differently from other eligible repairs. Proactive Repairs are defined as small problems that are worsening rapidly and that can be designed and constructed by the LMA or DWR. Implementation of such proactive repair projects allows for efficient repair of sites that may not otherwise be eligible but would be significantly more costly to implement if allowed to worsen. To qualify for proactive repair, the site must:

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- Have conditions requiring repair beyond the scope of routine maintenance.
- Not have critical erosion problem or erosion damage longer than 50 feet. The 50 feet limitation of erosion length does not apply to Small Erosion Repair Program (see detail below)
- Not have levee slope instability conditions longer than 50 feet.
- Not require abatement of seepage conditions.
- Not require new property rights.

If a site qualifies, it is listed as a Proactive Repair Site. If not, it is listed as a Potential Repair Site that will go through further evaluation and ranking. Small Erosion Repair Program (SERP) is a collaborative effort to streamline permitting process for repair of small erosion sites in a proactive and environmentally responsible manner. The first phase of SERP is implementing a pilot study to repair up to 15 sites per year for 5 years in the DWR maintained areas. If the resources agencies and other stakeholders find the process adequate, the SERP may be extended to all LMAs in the second phase.

2.1.3 Screening Potentially Eligible FSRP Sites Against Administrative Criteria

The annual list of potentially eligible sites will be assessed against administrative criteria for eligibility and sites falling into any of the categories below will be eliminated from further consideration:

- Sites that are inconsistent with the Site System-Wide Investment Approach identified in the 2012 Central Valley Flood Protection Plan.
- Sites that are components of a proposed or scheduled DWR or Central Valley Flood Protection Board (Board) project under other funding
- Sites that are authorized or scheduled to be addressed under an existing federal program.

2.1.4 Prioritization of Eligible Repairs

DWR's prioritization of potentially eligible repairs for soliciting LMA sponsorship will be based on:

- Maximizing flood risk reduction.
- Implementability and sustainability of repairs.
- Project funding.

Based on these criteria, a single potential FSRP repair project may consist of repairs at multiple sites of similar severity where collective repair will result in a significant incremental improvement in flood protection in a specific leveed area. Preference may be given to projects that would repair all eligible sites of similar severity in a leveed area over a project that would repair only a portion of similarly eligible sites.

Because of potential funding limitations, not all critical repair sites may be funded in each annual FSRP cycle. In addition, because implementation of an FSRP repair project is

contingent upon execution of a Project Agreement with the LMA, availability of funding, obtaining all necessary permits and real estate, and other constraints, not all eligible sites identified during an annual FSRP cycle may be implemented. Any potentially eligible critical or proactive repair site that is ineligible, or any eligible repair site that does not proceed to a Project Agreement with an LMA, will be retained for consideration during the next FSRP cycle.

2.2 FSRP Project Development Process

2.2.1 DWR Solicitation of LMA Sponsorship

For each eligible repair site or set of repair sites specific to an LMA, DWR will submit an Eligibility Notice to the LMA. The Eligibility Notice will contain:

- A description of the eligible repair site(s), including classification (i.e., critical or proactive repairs).
- Estimated cost of construction.
- A request for an Intent to Participate Letter from the LMA for entering into a Project Agreement with DWR.
- A list of documentation that must accompany the Intent to Participate Letter.

The requirements of the Intent to Participate Letter will be limited to confirmation that the LMA is authorized to contract with the state and intends to implement the project under DWR oversight and with cost-share.

The Eligibility Notice will specify a response deadline when Intent to Participate Letters must be either mailed (postmarked), submitted in person, or submitted electronically to DWR, as specified in the Eligibility Notice. An LMA receiving an Eligibility Notice will be encouraged to submit any questions to DWR that might help clarify Intent to Participate Letter requirements within 2 weeks of when the Eligibility Notice was provided. Incomplete Intent to Participate Letters submitted after the response deadline may be considered; however, DWR will reserve the right to delay consideration of such applications until the selection process for previously submitted Intent to Participate Letters is completed.

2.2.2 LMA Sponsorship

Implementation of an FSRP project is contingent on LMA sponsorship for an eligible FSRP project. LMA will confirm sponsorship by submitting to DWR an Intent to Participate Letter. At a minimum, an Intent to Participate Letter must include:

- A reference to the Eligibility Notice, including an overview of the FSRP repair project.
- A statement identifying the LMA's representatives.
- A statement concerning the applicant's legal authority to enter into a contract with the State of California, to implement a flood protection program, and to levy assessments and charges.

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- A Resolution of Authority authorizing filing of the sponsorship and designating a representative to sign the Intent to Participate Letter.
- A statement indicating the LMA is willing and able to design and implement the project as agreed upon in the Project Agreement negotiations and will comply with CWC § 9140 for reporting requirements.

The Resolution of Authority must be a resolution of the LMA's governing board authorizing specific individuals to sign a Project Agreement on behalf of the LMA sponsor and authorizing specific individuals to apply for and accept state disbursements.

On receipt of an Eligibility Notice, if the LMA declines to sponsor an eligible FSRP project, DWR will not perform repairs. Additionally, DWR may petition the Central Valley Flood Protection Board for formation of a maintenance area under CWC § 12878 et seq

2.2.3 Project Agreement

When an LMA submits an Intent to Participate Letter, DWR will provide the LMA a list of the documents required to support the development of a Project Agreement between the LMA and DWR. The extent of required documentation will depend on the type and size of the project and the complexity of the repair effort. This process is described in detail in Appendix B.

Once an LMA has submitted an Intent to Participate Letter and provided the required Project Agreement documentation, DWR will prepare a Project Agreement identifying the roles and responsibilities for DWR and the LMA when implementing the FSRP repair project. Appendix B provides more detail about the conditions and requirements of Project Agreements under the FSRP. The Project Agreement will include a cost-share distribution based on the DWR Cost-Share Formula and will be modified as appropriate using the methods described in Section 4.5.

All Project Agreements must be signed by the LMA sponsor. If a Project Agreement is not signed within 6 months of the date the LMA sponsor indicates its intent to sign, or if an LMA needs additional time to complete environmental review and permitting, it may submit a written request for additional time with appropriate justification. DWR reserves the right to deny a request for more time.

2.2.4 Project Implementation

As a component of the Project Agreement between the LMA and DWR, the LMA will prepare and update as necessary a work plan for the full project implementation according to the Project Agreement (See Appendix B). Projects must result in a complete and maintainable facility.

2.2.4.1 LMA Sponsor-Led Project Implementation

The LMA sponsor will design and construct the repair project, except for facilities identified in Section 2.2.4.2 below. DWR will monitor LMA activities and confirm compliance with all

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applicable permits, standards, laws, and other local, state, and federal requirements. The extent of oversight, depending on the type and complexity of the project, will be identified in the Project Agreement. FSRP repair projects implemented by LMA sponsors will be subject to the independent review requirements described in Appendix B.

For approved FSRP repair projects constructed by the LMA sponsor, an approval letter must first be issued to the LMA sponsor after execution of the Project Agreement, but before construction may begin. Before DWR will issue an approval letter, the LMA sponsor will be required to submit

- Copies of any permits and mitigation monitoring plan(s).
- Design plans and specifications.
- Copies of real estate documents and other agreements, as appropriate, to demonstrate compliance with all applicable requirements of CEQA, NEPA, and all other applicable state and federal environmental requirements, including requirements of federal Clean Water Act, the federal Endangered Species Act, and the California Fish and Game Code).

Execution of a Project Agreement does not compel DWR to issue an approval letter. Issuance of an approval letter will constitute approval to begin construction.

2.2.4.2 DWR-Led Project Implementation

DWR will design and construct projects at facilities identified in CWC § 8361 and those maintained by DWR pursuant to CWC § 12878 et seq. DWR will be responsible for complying with all applicable permits, standards, laws, and other local, state, and federal requirements. FSRP repair projects implemented by DWR will be subject to the independent review requirements described in Appendix B.

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3.0 PROJECT AND LMA ELIGIBILITY

3.1 Eligible LMA Sponsor

An LMA sponsor for an FSRP repair project must be a levee district, reclamation district, or other agency with maintenance responsibilities for SPFC facilities. The sponsor must also be qualified to contract with DWR. A joint powers authority or other entity created and funded to design and implement flood control repairs or improvements may participate as an LMA sponsor provided the LMA with maintenance responsibility for the SPFC facility is a legal partner of the authority. The sponsor must also accept responsibility for continuation of O&M and related activities for the facility on completion of repairs.

LMA sponsors are subject to state and federal conflict of interest laws. Failure to comply with these laws, including business and financial disclosure provisions, may result in a withdrawn Project Agreement and the project becoming ineligible for funding. Other legal action may also be taken. Before agreeing to become an LMA sponsor, LMAs are urged to seek legal counsel regarding potential conflict of interest concerns and requirements for disclosure. Applicable statutes include Government Code § 1090 and Public Contract Code § 10410 and § 10411.

As part of the conflict of interest requirements, DWR may require individuals working on behalf of an LMA sponsor to file a Statement of Economic Interests in the form of a Fair Political Practices Commission Form 700 if it is determined an individual is a consultant for Political Reform Act purposes.

An LMA sponsor must provide documentation of its authority and capability to fund its cost-share and implement its participation in a FSRP repair project as defined in the Project Agreement. Depending on the level of participation and the size and complexity of the repair, DWR may require a written Financial Plan, including a statement of financial capability, a plan to fund its cost-share to build the project, a plan to fund its obligations to perform O&M for the project and a plan to fund its obligation to repair, rehabilitate, reconstruct and replace the project. Detailed requirements for the Financial Plan, if required, are contained in Appendix B.

An LMA sponsor will be required to keep informed of and take all measures necessary to ensure compliance with applicable California Labor Code requirements, including:

- § 1720 et seq of the California Labor Code regarding public works.
- Limitations on use of volunteer labor as defined in California Labor Code § 1720.4.
- Labor compliance programs as defined in California Labor Code § 1771.5.
- Payment of prevailing wages for work done and funded pursuant to these draft Guidelines, including any payments to DWR of industrial relations as defined in California Labor Code § 1771.3.

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3.2 Eligible Repair Projects

An eligible project must be a repair project consisting of work on a critical problem on existing facility of the SPFC. Eligible projects include repair of levees, weirs, flood relief structures, control structures, pumping plants, channels, bypasses, and other facilities of the SPFC. Actions that may be funded include:

- Repair of damaged levees.
- Repair of levee crest and access roads to ensure flood fight capability for the upcoming flood season.
- Erosion repair.
- Sediment control and channel capacity restoration.
- Repair of weirs, flood relief structures, and control structures.
- Modifications to pumping plants as necessary to restore facility to design capacity.
- Implementation of mitigation measures for the repair project, including capital costs related to mitigation through participation in a natural community conservation plan.
- Performance of work to meet habitat, open-space, or recreation objectives as part of a repair project.

Eligible FSRP projects may restore the level of protection up to the intended design level of protection and must fall outside the definition of routine maintenance. If a project improves a facility to a higher level of protection than originally intended, or represents routine maintenance, it is not eligible as discussed below.

3.3 Ineligible Repair Projects

The following project types are ineligible for consideration for repair under the FSRP:

- Repairs to sites that are not components of the SPFC, including appurtenant non-project levees (see below).
- Routine maintenance activities that should be performed under an LMA O&M program.
- Repair projects that increase a facility's level of protection to a higher level than its design level of performance or original design intent.

Appurtenant non-project levees are levees that, while not components of the SPFC, either have the potential to affect the operation of an SPFC feature should they fail, or that provide flood protection to areas that are also afforded protection by SPFC facilities. DWR has identified and evaluated such levees within its Levee Evaluation Program, and although potential repair sites identified on appurtenant levees may be evaluated under the FSRP as described in Section 3.0, these sites are not eligible FSRP repair projects. However, LMAs will be notified of any sites on appurtenant non-project levees that would otherwise meet eligibility, and LMAs may pursue a project under other state or alternate funding sources.

Routine maintenance responsibilities are defined in USACE's standard O&M manuals and unit-specific supplements, assurance agreements, and in state and federal law. For the

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Sacramento River Flood Control Project, O&M responsibilities are further defined by CWC § 8370 and § 12642. For the San Joaquin River Basin, O&M requirements and responsibilities are based on assurance agreements between the Board and each LMA, and CWC § 12642. For the purposes of the FSRP, routine maintenance activities may include:

- Removing debris, rubbish, downed trees, sediment, and other obstructions to natural flow.
- Controlling weeds, grasses, emergent vegetation, and woody vegetation.
- Controlling rodents, grouting rodent holes, dragging and track walking levee slopes.
- Repairing gates, barricades and small structures.
- Completing minor erosion and stability repairs.
- Other work necessary to maintain the function and integrity of the flood control projects.

Maintenance responsibilities are also described in the USACE Flood Control Regulations, 33 CFR § 208.10, USACE O&M manuals, and local assurance agreements.

3.4 Eligible Costs

Eligible project costs are the reasonable and necessary actual costs associated with an eligible project and are described in the Project Agreement, including:

- Costs associated with design.
- Environmental documents.
- Property rights acquisition or purchase.
- Construction.
- Independent reviews.
- Work to meet the habitat, open-space, or recreation objectives described in the DWR Cost-Share Formula.

Only costs for work performed as described in the Project Agreement, and for any DWR-approved change, are eligible project costs. For all eligible project costs described below, billing and payment will be based on the cost of work accomplished. For construction, billing and payment will be based on the cost of work accomplished on the contract items and tasks estimated in the Project Agreement. Unit prices will be used only for establishing the estimated amount of state funding.

Once an LMA sponsor is established, no funds will be disbursed until a Project Agreement has been executed. Under the conditions described in Appendix C, the cost of work performed prior to execution of the Project Agreement may be eligible for credit against the local share of project costs.

Eligible project costs include only reasonable and necessary actual costs directly related repair project elements such as:

- Obtaining necessary environmental permits and associated environmental mitigation directly related to the proposed project, including costs associated with preparing

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documents required by the California Environmental Quality Act (CEQA) and, if applicable, the National Environmental Policy Act (NEPA).

- Legal fees for conducting work eligible for reimbursement.
- A proportionate share of reasonable overhead costs related to the repair project.
- Performing design activities in accordance with the appropriate environmental documents.
- Collection of engineering data for use in the design or construction.
- Advance preparation for right of way acquisition, as described in Section 4.8.
- Eligible real estate capital outlay costs (see Section 4.8).
- Obtaining other necessary federal or state governmental approvals.
- Necessary relocation expenses for property owners and tenants affected by the project.
- Utility relocations and damage to real property.
- Constructing the project in accordance with the design, including project management and other supplementary costs approved in writing by DWR prior to construction.
- Progress reports and the final project report.
- DWR monitoring of project construction.
- Conducting an independent review as described in Appendix B.
- Other costs identified as determined by DWR to be eligible and included in the Project Agreement.

With respect to costs associated with environmental mitigation and monitoring required by CEQA, NEPA, or other applicable permits, only those costs incurred in the first 3 years that the mitigation and monitoring program is in effect may be considered eligible project costs. This mitigation and monitoring includes costs incurred to establish plants and monitor environmental health. After the mitigation and monitoring program has been in effect for 3 years, any continuing costs associated with environmental mitigation and monitoring will be considered routine maintenance, and will not be considered eligible FSRP costs.

To determine the eligibility of certain types of costs, DWR intends to use the same guidance document used by USACE, the Office of Management and Budget Circular A-87 (see 2 CFR Part 225, Exhibit E [indirect costs], or 2 CFR Part 225, Exhibit B, Item 23 [interest costs]). A copy the Office of Management and Budget Circular A-87 can be found at: http://www.whitehouse.gov/sites/default/files/omb/assets/omb/fedreg/2005/083105_a87.pdf.

4.0 GENERAL CONDITIONS

This section covers the general conditions that apply to implementation of all eligible FSRP repair projects. These conditions will be incorporated into the Project Agreement as described in Appendix B.

4.1 Basis for Initial Funding and Scheduling

Initial funding will be based on the pre-design estimate of costs and any LMA contributions that are to be credited as defined in Appendix C of these draft Guidelines. Funding may be adjusted immediately prior to the execution of a Project Agreement with the LMA, immediately after the project construction contract is awarded, and when all costs are known after completion of construction. The adjustments will be based on actual eligible expenditures and updated estimates of completion costs.

The initial schedule for construction will be derived from the critical path method diagram in the design, with the start date updated when determined. The schedule may be adjusted to reflect changes approved by DWR.

4.2 Basis for Disbursement of Funds

Disbursement of funds under an executed Project Agreement will be based on conditions identified in Appendix C of these draft Guidelines.

4.3 Regulatory Compliance

Projects will comply with all applicable permits, standards, laws, and other local, state, and federal requirements. These may include the regulatory requirements of the Federal Energy Regulatory Commission, USACE, the Central Valley Flood Protection Board, the State Water Resources Control Board, and other agencies. Projects will also comply with

- CEQA.
- NEPA, if applicable.
- State and federal Endangered Species Acts.
- Federal Clean Water Act.
- Any other applicable laws.

For projects constructed by an LMA, the LMA sponsor must identify and obtain any permits required for the work. For projects constructed by DWR, DWR will identify and obtain required permits.

4.4 Environmental Compliance

FSRP projects are required to comply with CEQA. DWR will not fund construction work before the CEQA/NEPA process is completed. For LMA-led FSRP projects, the LMA will be responsible for the preparation, circulation, and consideration of the environmental document prior to making any irretrievable commitments of resources for project activities that are

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subject to CEQA and NEPA when required. The LMA, in consultation with DWR, will be responsible for determining the appropriate environmental document to comply with CEQA requirements (i.e., Statutory Exemption, Categorical Exemption, Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report).

4.5 Cost-Share

Disbursement of FSRP funds to an LMA sponsor will be under a Project Agreement between DWR and the LMA sponsor. Projects will be cost-shared with LMA sponsors. The total project cost of repair projects sponsored by the LMA will be shared with the LMA according to percentages obtained using the methods described below. For FSRP repair projects on facilities maintained by DWR through a maintenance area, costs will be shared in the same manner, but the local share will be paid using maintenance area funds. For FSRP repair projects on facilities maintained by DWR under CWC § 8361, DWR will pay all applicable costs through the FSRP. DWR will apply a maximum state funding of \$5,000,000 per project. DWR's director may authorize variances to this provision to fund projects under exceptional circumstances. The total project cost does not include DWR's costs incurred prior to notifying the LMA of project eligibility, including the compilation, evaluation, prioritization and selection of potential repair sites or the development and negotiation of the Project Agreement.

Projects may also be partnered with federal agencies or state agencies other than DWR, if such sponsorship is available and applicable. Project partnering with federal or other state agencies will be accomplished under agreements between the LMA or DWR and those agencies. These additional funds will be applied against the total project costs, with the remaining project costs to be shared between the LMA and DWR in accordance with cost-share provisions described in this section.

4.5.1 Base Cost-Share Provisions

The base DWR cost-share of the FSRP will be based on the latest edition of the Guidelines for Establishing Local Agency Cost-sharing Formulas for Flood Programs and Projects (DWR Cost-Share Formula). The DWR Cost-Share Formula provides additional incentive objectives for the sponsors (i.e., the LMA) to reduce their cost shares. The DWR Cost-share formula can be referenced on the internet at:

http://www.water.ca.gov/floodsafe/docs/Cost_Sharing_Formula_12-29-10_Final.pdf

The DWR Cost-Share Formula allows the State to cost-share at a higher percentage than the base percentage of 50 percent. Credit is given for open space, habitat, and recreation enhancements, and for protection of State facilities up to a cap of 20 percent. Additional credit towards a higher State cost-share is available for flood protection in economically disadvantaged areas. The DWR Cost-Sharing Formula also allows credit to be given for program-specific enhancements; however, the maximum State cost-share cannot exceed 90 percent. The FSRP program-specific credits are described in the following section.

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Table 4-1. FSRP Cost-Share Incentive Objectives Performance Score.				
No.	Criteria Description	Rating Score¹	Weight Factor	Weighted Score
LMA - Reporting Performance per CWC §9140				
1	Information known to local agency that is relevant to the condition or performance of Project Levee (or jurisdictional Non-project Levee).		0.5	
2	Information identifying known conditions that might impair or compromise the level of flood protection provided by the Project Levee (or jurisdictional Non-Project Levee)		1	
3	A summary of maintenance performed by the LMA during the previous fiscal year.		1	
4	A statement of planned work and estimated cost for operation and maintenance of the Project levee (or jurisdictional Non-Project Levee) for the current fiscal year, as approved by the LMA.		0.5	
LMA - Emergency Response Preparedness				
1	Develop and publish Emergency Action Plan or Flood Safety Plan.		2	
2	Active participation in annual flood pre-season coordination meetings with the Flood Operations Center, the Sacramento County Office of Emergency Services, USACE, and other agencies.		2	
3	Training of all LMA staff and contractors likely to respond to flood emergencies in: a) Standardized emergency management system, national incident management system, and incident command system (SEMS/NIMS/ICS) introduction; b) Flood Fight Methods; and c) Environmental Awareness		1	
LMA - Operation and Maintenance				
1	All-weather access road to support emergency flood fight response.		1.5	
2	Rodent abatement program, entailing an effective plan, budget, practice, and inspections.		1	
3	Vegetation management in compliance with current DWR standards and policies.		1	
4	Encroachment management: inspections, evaluations, and enforcement.		1	
5	Routine maintenance of flood control facilities.		2.5	
6	Participation in a Corridor Management Strategy (see 2012 CVFPP - p. 4-8 and Att. 2, p. 5-23) or similar planning effort.		1.5	
7	5-year plan for routine and non-routine maintenance projects. The plan should include, at minimum, a list of prioritized projects, schedule, and annual budgets.		1.5	
LMA – Participation in State Systemwide Investment Approach				
1	Participation in Regional Flood Management Planning Initiative, IRWM region, or other multi-benefit project		1.0	
2	Collaboration with LMA's in same Region or Leveed Area		1.5	
Total weighted score:				
Minus minimum qualifying score for FSRP cost-share enhancement:				-6
LMA Maintenance Quality Index (MQI) Score (Max = 35):				

¹Rating Scores: Not acceptable = 0; Minimally-acceptable = 1; Acceptable = 2

4.5.2 Enhanced Cost-Share Specific to FSRP

The FSRP will provide for increasing the base state cost-share for LMAs who have demonstrated effective flood-risk reporting, emergency response, and/or operation and maintenance effectiveness or are actively participating in the regional flood management projects. The sponsoring LMA may be eligible to reduce its cost-share based on its past performance with respect to compliance with the reporting requirements per the CWC § 9140, to emergency response preparedness, and O&M. The sponsoring LMA may be eligible to reduce its cost-share based on its participation with DWR as a sponsor or participant in the Regional Flood Management Planning Initiative, an Integrated Regional Water Management region, or other multi-benefit project; or if it is collaborating on implementing projects with other LMAs in its region or leveed area for which collective repair will result in an incremental flood risk reduction. Table 4-1 lists performance criteria and associated scores. Scoring will be at the discretion of DWR and will be negotiated during the Project Agreement. The LMA maintenance quality index (MQI) score correlates to the percent increase in state cost share, subject to limitations.

The maximum credit for FSRP program-specific enhancements is 35 percent. When combined with the credits given for all of the enhancements (excluding credit for disadvantaged areas) allowed by the DWR Cost-Share Formula, the State's total cost-share cannot exceed 85 percent; however, if eligible for credit as an economically disadvantaged area, the maximum state cost share can increase to 90 percent. Several examples of cost-share calculations using these draft Guidelines are provided in Appendix D.

4.6 Design

Design calculations, plans, and specifications for FSRP repair projects will be prepared by the LMA or DWR as defined by the terms of the Project Agreement. Designs will be converted into formal contract documents providing the information needed to begin project construction, including plans showing project features, specifications complementing the plans, a detailed cost estimate showing the eligible project costs by line item, a design analysis or report showing engineering calculations, a task breakdown for project construction, and a schedule for project construction produced by use of a critical path method diagram. All documents will be prepared with enough specificity and completeness so that a qualified and experienced general contractor will be able to understand the intent of them and bid on the project. Design calculations, plans, specifications, and estimates will be certified by an engineer who is registered pursuant to California law with a minimum of 5 years of relevant geotechnical experience unless otherwise approved by DWR. DWR reserves the right to review and approve the qualifications of consultants and contractors employed on an FSRP Project Agreement. Projects must result in a complete and maintainable facility.

4.6.1 Design Criteria

The design criteria are the most significant factors affecting the selection of repair alternatives because they impact the repair costs. Design criteria will adhere to these principles:

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- Repairs will primarily focus on addressing a critical problem without exacerbating other existing problems at the same site. For example, if erosion problem is critical and is proposed for repair, the proposed repair shall be able to withstand the erosive forces anticipated up to a design level of flood protection. The erosion repair would not address existing through seepage that is a non-critical problem at the same site. Design reviews will ensure that the proposed repair does not exacerbate the other existing problems.
- Repairs shall meet the minimum engineering practices for safety.
- Repairs should be designed to maximize avoidance of environmental impacts and to limit mitigation to impacts that cannot be avoided.
- At DWR's discretion, the repairs may be designed to a lower level of flood protection. This pragmatic approach will allow an incremental reduction of flood risk.

To ensure consistency in FSRP designs and to expedite repair implementation, DWR will prepare rehabilitation criteria that will further define design criteria for erosion, slope stability, and seepage problems under the FSRP using these principles. In addition, the Central Valley Flood Protection Board may create an advisory committee that will work with DWR, LMAs, interested stakeholders, and USACE to develop rural levee repair and improvement criteria that may be applied to FSRP repairs. A draft of these rural levee repair and improvement criteria is scheduled to be available by July 2013.

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4.7 Ecosystem Improvement Habitat Enhancement, and Recreation Components

DWR or the LMA sponsor may originate elements contributing to the habitat, open space, and recreation objectives as described in the DWR Cost-Share Formula. These costs are part of the total project cost, provided they are originated by the LMA and are not funded by federal or other state agencies. Habitat, open space, and recreation elements that do not meet these conditions are not included in the total project costs.

4.8 Acquisition of Property Rights

FSRP repair projects may be constructed on land currently secured for flood project purposes that is managed by the Sacramento-San Joaquin Drainage District or on land for which the LMA has secured the rights to use for construction, and O&M of the project improvements. Costs associated with acquisition of property rights are considered eligible project costs as defined in previous sections. DWR may perform work in preparation for acquisition of right-of-way and other real property rights for the project being designed under the following conditions:

- DWR may advance state funds to pay the LMA staff salaries, staff expenses, and equipment and materials costs for performing work leading to the acquisition of property rights.
- DWR may advance state funds to pay for real property rights to be acquired that are necessary and appropriate for the project.
- DWR may account for all reimbursable costs of preparing for property rights acquisition as an item in the design task breakdown.

- DWR will provide a list of properties for which state funds were expended to prepare for acquisition. The list will identify which actions, such as parcel descriptions and title searches, were performed for each parcel.
- The LMA sponsor will pay the local share of the costs of property rights acquisition and preparation for such acquisition.

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5.0 CHANGES TO OVERALL WORK PLAN AFTER FUNDING AGREEMENT IS SIGNED

After the Project Agreement is executed, DWR will consider approving or requiring changes to the work plan due to circumstances that were not reasonably foreseeable at the time the Project Agreement was executed. DWR will allow non-material changes to be made to the work plan without formally amending the Project Agreement. Non-material changes include:

- Changes to the design plans if, at the sole discretion of DWR, DWR determines changes will improve the project design and will not result in a budget revision or an increase in the overall schedule beyond the term of the Project Agreement.
- Changes to portions of the work plan concerning budget that would not result in an increase to the state's funding commitment, as explained below.
- Changes to the work plan's project schedule that do not extend the term of the Project Agreement.

If, at DWR's discretion, changes in the scope of the work plan require an increase in funding, DWR may authorize an increase in the project budget of up to 10 percent without amending the Project Agreement.

If the LMA sponsor and DWR agree to a material change with respect to the work plan that decreases the total project cost, there shall be a proportionate reduction in the limit on state funds.

If a change to the DWR Cost-Sharing Formula causes the overall state share of the total project cost to increase or decrease, then the Project Agreement must be amended, which will be subject to approval by the Department of General Services.

If DWR approves a material change pursuant to the provisions of this section, the LMA sponsor shall include information regarding the material change in the reports required by the Project Agreement. DWR and the LMA sponsor shall also formally amend the Project Agreement to reflect any material change, which will be subject to approval by the Department of General Services.

5.1 LMA Sponsor's Construction Default

If for any reason an LMA sponsor is unable to completely construct an FSRP repair project, DWR, at its sole discretion, may do any or all of the following:

- Cancel the Project Agreement.
- Complete the project using its own resources.
- Contract with the current or any other contractor to compete the project.

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- Require that the LMA sponsor return all or a portion of state funds, with interest at the State Surplus Money Investment Fund rate at the time of default, accruing from the date the funds were provided.

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6.0 GUIDELINES FOR PUBLIC REVIEW AND AMENDMENTS

6.1 Public Review of Guidelines

These draft Guidelines in their present form represent a draft document to be submitted for public review and comment. Upon draft release, the draft Guidelines will be available for public comment for 45 days. DWR will hold one or more public meeting(s) during the public comment period to provide an additional opportunity for public review and comment on these the draft Guidelines. The location dates/times, and other relevant meeting information will be noticed upon release of these draft Guidelines. DWR will then consider comments received and make revisions, as appropriate. The final Guidelines will be noticed by DWR and made available on the FloodSAFE website at <http://www.water.ca.gov/floodsafe/>.

6.2 Amendments to Guidelines

Any or all of the eligibility criteria, requirements, or procedures specified in these draft Guidelines may be changed, substituted, or terminated, and other criteria may be added at DWR's discretion by amending these draft Guidelines pursuant to the process set forth in this section. Amendments to the draft Guidelines will be publicly posted and made available for public comment for a minimum of 2 weeks.

DWR does not intend to apply amendments to draft Guidelines for projects where Project Agreements have been executed; however, in situations where an executed Project Agreement must be amended for other reasons, DWR will consider making changes to the agreement that are consistent with the version of the Guidelines in effect at the time that the agreement is amended. An executed Project Agreement can only be amended if both DWR and the LMA sponsor agree to do so.

If the eligibility criteria are changed for any reason following issuance of any Eligibility Notices but before Project Agreements are executed, DWR will notify the LMA sponsor of the changes. If the LMA sponsor has supplied information, DWR will request additional information as needed to determine whether the proposed projects meet all applicable revised or new criteria. DWR, following any response of the LMA, shall have the option to either cancel the Eligibility Notice for the project or offer a revised Eligibility Notice reflecting the changed conditions.

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APPENDIX A

Definitions

Unless the context otherwise requires, wherever the following acronyms and terms, or pronouns in place of them, are used in these draft Guidelines and in Project Agreement documents, the intent and meaning shall be interpreted according to the definitions below.

Benefited Area

The area that receives improved flood protection from the proposed project. The benefited area should be the same area for which benefits are estimated for economic analysis. Generally, this will include a hydrographic basin.

Board

The Central Valley Flood Protection Board

California Median Annual Household Income

The median annual household income in dollars for California reported in the most recent census or updated census-based data.

Critical Damage

Damage to a flood protection facility such that the facility is near failure, as evidenced by the existence of any of the following damage conditions, and would reasonably be expected to fail during the course of a single flood season or single high water event:

- Erosion has encroached into the levee or its foundation (i.e., the projected waterside slope of the levee).
- Internal erosion, caused by seepage through or under the levee during a past flood event, has occurred (i.e., there is evidence of boils, or piping, that moved fine soils from the levee or its foundation).
- The levee is actively unstable, as evidenced by motion of the levee.
- Erosion has encroached into the channel bank that may cause bank failure leading to loss of design flow conveyance capacity.
- A channel cross section had decreased such that the channel can no longer pass design flow with required freeboard
- Any other flood protection facility is actively unstable and may lose its flood protection function.

Critical Path Method

A method of calculating a diagrammatic schedule that is derived by calculating the total duration of a project based on individual task durations and their interdependencies. A critical path method diagram is usually depicted in a bar graph format showing the task durations and their interdependencies.

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Damage

A condition of a levee or other flood protection facility directly caused by the action of water or fatigue (see Critical Damage and Serious Damage).

Design

All activities following a pre-design phase leading to physical definition of the project in sufficient detail to enable project construction. A design will be certified by a Professional Civil Engineer registered in the State of California.

Disadvantaged Area

A benefited area having a median annual household income that is less than the disadvantaged household income.

Disadvantaged Household Income

A household with 80 percent of the California median annual household income.

Eligibility Notice

A letter from the Department of Water Resources to a local maintaining agency about a potential Flood System Repair Project (FSRP), stating that the subject project may be eligible for cost-sharing and requesting that the local maintaining agency provide an Intent to Participate Letter to become the LMA sponsor of the project, enter into a Project Agreement, participate in the cost, and perform the construction.

Eligible Project Costs

The reasonable and necessary actual costs associated with an FSRP repair project as further described in these draft Guidelines. Such costs include only those associated with elements that are necessarily a part of the flood protection effort or that are included to meet the habitat, open space, and recreation objectives described in the Department of Water Resources' Cost-Share Formula.

Flood Protection Facility

Any levee, embankment, structure, channel, or other facility whose function is to protect property or people from the effects of floods which is part of the State Plan of Flood Control.

Full-Share Costs

Eligible project costs that will be cost-shared at 50 percent plus any increases approved by the Department of Water Resources under these draft Guidelines (see Section 3.4).

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Intent to Participate Letter

A letter from a local maintaining agency to the Department of Water Resources about a potential Flood System Repair Project, stating that the local maintaining agency intends to become the sponsor of the repair project, enter into a Project Agreement, participate in the cost, and in the case of the Flood System Repair Project, perform the construction.

Levee

An embankment or similar structure intentionally constructed for the purpose of preventing overflow of a watercourse, which is a part of the State Plan of Flood Control.

Leveed Area

One or more levee segments and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices to provide reasonable assurance of excluding flood water from an associated separable floodplain. A leveed area is the largest geographic area for which priorities are assigned for potential repairs as part of the Flood System Repair Project and are consistent with Central Valley Flood Protection Plan impact areas.

Level of Protection

Relates to the probability of flooding in any 1 year (e.g., a 1 in 50 annual chance of flooding is a 50-year level of protection).

Limited-Share Costs

Eligible project costs for which the Department of Water Resources' cost-share is limited to 50 percent by law or by Department of Water Resources policy.

Local Agency

A public agency in the state, duly organized, existing and acting pursuant to the laws thereof, in good standing; including any county, city, district, or joint powers authority. For the purposes of these draft Guidelines, a local agency must have authority to implement flood management projects.

Local Maintaining Agency

A local agency responsible for flood control including maintenance of State Plan of Flood Control facilities. With respect to a particular project, the local maintaining agency's maintenance responsibility must include the site of the proposed project.

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Maintain

To keep a flood protection facility in the condition in which it was constructed, preserving its features against failure or decline in functionality, including maintenance, repair, rehabilitation, reconstruction, and replacement when necessary.

Maintenance Area

The geographic area established pursuant to California Water Code § 12878 et seq. and assessed to support specific flood-protection facilities maintained by the Department of Water Resources in lieu of maintenance by a local maintaining agency.

Maintenance Quality Index

A measure of the quality of maintenance performed by a local maintaining agency, by the Department of Water Resources in a maintenance area, or by a flood maintenance yard of the Department of Water Resources on all State Plan of Flood Control facilities for which that entity is responsible under California Water Division 5, Flood Control (Chapter 3, Maintenance And Operation At Sacramento River Flood Control Project), and Public Resources Code § 5096.805.

Median Annual Household Income

The median annual household income for the benefited area reported in the most recent census or updated census-based data provided by a vendor selected by the Department of Water Resources.

Milestone

A time when a significant and specific portion of a project is completed and identified in the Project Agreement as a time for disbursement of state funds.

Open Space

Any parcel or area of land or water that is essentially unimproved and restricted to an open space use consistent with the uses set forth in California Government Code § 65560. Open space is designated as any of the following:

- Open space for the preservation of natural resources.
- Open space used for the managed production of resources, including forest lands, rangeland, and agricultural lands.
- Open space for outdoor recreation.
- Open space for public health and safety, including, flood plains, watersheds, and areas required for the protection of water quality or groundwater recharge.

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Pre-Project Costs

Costs related to a Flood System Repair Project that may qualify as eligible project costs in all respects except that they were incurred before the execution of a Project Agreement.

Proactive Repairs

Small deficiencies that are worsening rapidly, have the potential to become critical, and that can be designed and constructed by the local maintaining agency.

Project

A project is all engineering, design, acquisition of permits and right-of-way certifications, construction and related activities undertaken to implement a discrete action undertaken under these draft Guidelines.

Project Agreement

A contract entered into by a local maintaining agency sponsor and the Department of Water Resources describing the conditions under which a Flood System Repair Project will be performed, and defining responsibility for providing funds and services for the project.

Repair

An action that restores, rehabilitates, reconstructs, or replaces a levee, weir, bypass, or other facility of the State Plan of Flood Control to regain the functionality of the facility to the level of the original design.

Routine Maintenance

Normal operations and maintenance responsibilities as defined by California Water Code § 8370 and § 12642, operations and maintenance manuals and supplements, and U.S. Army Corps of Engineers flood regulations. For the San Joaquin River basin, operations and maintenance requirements are based on assurance agreements between the Central Valley Flood Protection Board and each local maintaining agency. Routine maintenance activities may include:

- Removing debris, rubbish, downed trees, sediment, and other obstructions to natural flow.
- Controlling weeds, grasses, emergent vegetation, and woody vegetation.
- Controlling rodents, grouting rodent holes.
- Dragging and track walking levee slopes.
- Repairing gates, barricades and small structures.
- Completing minor erosion and stability repairs.
- Other work necessary to maintain the function and integrity of the flood control projects.

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Seepage

Water passing through or under a levee under hydrostatic pressure without any definable channel or duct, and evidenced by wetness of the levee or flowing or standing water on the land side.

Serious Damage

Damage to a flood-protection facility such that the facility is approaching a state of failure but is not likely to fail during the next flood season or single high water event, as evidenced by the existence of any of the following damage conditions:

- Erosion is predicted to encroach into the levee or its foundation within the next flood season or single high-water event.
- Internal erosion caused by seepage through or under the levee does not appear to have occurred yet, but is predicted through engineering analysis to occur at the project design stage (e.g., the factor of safety against piping is less than unity).
- The levee is not actively unstable, but an engineering analysis demonstrates an unacceptable factor of safety for stability (i.e., the design stage steady state seepage slope stability safety factor of less than 1.2 for a landside levee slope).
- Active erosion is predicted to encroach into the channel bank, which may cause bank failure leading to loss of design flow conveyance capacity.
- Any other facility is not actively unstable, but an engineering analysis demonstrates an unacceptable factor of safety.

Sponsor

A local maintaining agency that has agreed in writing to participate in a Flood System Repair Project as described in these draft Guidelines.

State

Where the context implies a political subdivision, (a) the State of California, or (b) where the context supports, the State of California, acting by and through the Department of Water Resources.

State Plan of Flood Control

As defined in California Water Code § 5096.805(j),

“the state and federal flood control works, lands, programs, plans, conditions and mode of maintenance and operations of the Sacramento River Flood Control Project described in Section 8350 of the CWC, and of flood control projects in the Sacramento River and San Joaquin River watersheds authorized pursuant to Article 2 (commencing with Section 12648) of Chapter 2 of Part 6 of Division 6 of the CWC for which the board or the department has provided the assurances of non-federal cooperation to the United States, which shall be updated and

compiled into a single document entitled 'The State Plan of Flood Control.'

Total Project Cost

The portion of the cost of the project that is to be shared between the Department of Water Resources and the local maintaining agency sponsor, or paid entirely by the Department of Water Resources if there is no local maintaining agency sponsor. The costs contributed by other state or federal agencies are not included in the total project cost.

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APPENDIX B

Provisions for Project Agreements

1.0 INTRODUCTION

The following text describes the required provisions for Project Agreements between Department of Water Resources (DWR) and Local Maintaining Agencies (LMAs) for projects administered under the Flood System Repair Project (FSRP) as defined in the draft Guidelines.

Before DWR will make any disbursement for an LMA sponsored project, DWR and the LMA sponsor must execute a Project Agreement. The Project Agreement will require review and approval by the Department of General Services.

The Project Agreement is a contract between the LMA sponsor and DWR, and details the terms by which the LMA sponsor and DWR will work together to fund, manage and complete the FSRP repair project. Those terms include, among other things:

- Discussion of the project schedule and cost.
- Cost-sharing agreement.
- Limits of state funds.
- LMA sponsor responsibility for completing and maintaining the project.
- Method for the LMA sponsor to receive project funds from DWR.
- Method for DWR to receive project funds from the LMA sponsor.
- Discussion of reporting requirements.
- Independent review requirements.

If an LMA fails to completely construct a project under the terms of the Project Agreement, DWR, at its sole discretion, may do any or all of the following:

- Cancel the Project Agreement.
- Complete the project using its own resources.
- Contract with the current or any other contractor to compete the project.
- Require that the LMA sponsor return all or a portion of state funds, with interest at the State Surplus Money Investment Fund rate at the time of default, accruing from the date the funds were provided.

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2.0 PROVISIONS FOR ALL PROJECT AGREEMENTS

Project Agreements will include provisions suitable for the project conditions. At a minimum, all Project Agreements must include:

- A description of the project.
- A cost-sharing formula in which the LMA sponsor pays a specified percentage of the eligible project costs.
- A requirement that the LMA sponsor indemnify and hold the state, its agencies, officers, and employees free and harmless from any and all liability arising out of project activities.
- A requirement that the LMA sponsor assures the completed project and any associated environmental mitigation measures will be operated, maintained, repaired, rehabilitated, reconstructed, and replaced in perpetuity, in accordance with a Maintenance Plan prepared by the LMA sponsor and approved by DWR.
- A provision that the LMA sponsor will perform maintenance with its own staff, or will employ another agency or organization satisfactory to DWR.
- A provision that the LMA sponsor will control encroachments on project facilities and properties, whether unauthorized or permitted, and will not allow any new encroachments without Board approval.
- A requirement that, if DWR deems Operation & Maintenance measures, repairs, rehabilitation, reconstruction, or replacement necessary, and the LMA sponsor does not, in the opinion of DWR, provide these services promptly, DWR may, upon 30 days written notice, enter the property, perform the required work, and bill the LMA sponsor, and the LMA sponsor will reimburse DWR for any work so performed.
- A provision stating that, notwithstanding the ability of DWR to enter the property to perform required operations, maintenance, repairs, rehabilitation, reconstruction, or replacement, DWR can seek a court order requiring the LMA sponsor to perform its contractual obligations to do such work and/or pay DWR's costs for doing such work.
- Any other engineering, technical, financial, economic, environmental, or legal requirements deemed necessary by DWR, including additional requirements with regard to indemnification.
- Citations of the LMA sponsor's statutory enabling laws, authority to construct the project, and authority to contract with DWR, including a brief description of procedural steps required by the LMA sponsor's enabling laws to contract with DWR.
- Evidence of compliance with Section 3.0 of Appendix C of the draft Guidelines regarding acknowledgement of flood risk, application for credit or reimbursement from USACE, and execution of an agreement providing for the LMA sponsor's operation, maintenance, repair, rehabilitation, reconstruction, and replacement of the project.
- An attachment containing a resolution of the LMA sponsor's governing body approving the Project Agreement and designating a representative to execute the Project Agreement and to sign requests for disbursement of state funds.
- If required by DWR, an appendix containing the LMA sponsor's Financial Plan, as described in Section 2.1.

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- If required by DWR, an appendix containing the LMA sponsor's Maintenance Plan, as described in Section 2.2.

2.1 Financial Plan

DWR may require that an LMA sponsor provide a Financial Plan as part of the Project Agreement; however, a Financial Plan will not be required if the cash component of the LMA's cost-share is less than 25 percent of the LMA's annual O&M budget. When required, the Financial Plan must demonstrate both how the LMA sponsor will finance its share of the project and how it will fund its obligations to operate, maintain, repair, replace, and rehabilitate the project. The Financial Plan must be reviewed and certified by a Certified Public Accountant or, preferably, a Certified Government Financial Manager.

DWR will provide a preliminary cost estimate, a preliminary project schedule, and the percentage value of the LMA sponsor's cost-share to serve as a framework for the LMA sponsor's Financial Plan. The estimate and schedule will be subdivided into tasks and correlated to give the timing and cost of each task.

The Financial Plan will become an appendix of the Project Agreement. It must be submitted before the Project Agreement is executed.

With respect to the LMA sponsor's cost-share of the project, the Financial Plan must include:

- A statement of financial capability with:
 - Evidence that the LMA sponsor has the financial resources to adequately fund its portion of the project plus a contingency of at least 10 percent.
 - Evidence of the LMA sponsor's authority to use the identified source or sources of funds.
 - Evidence of the LMA sponsor's ability to obtain additional funds if necessary.
 - If the LMA sponsor is relying on its full faith and credit to obtain remaining funds (such as the use of general obligation bonds), a credit analysis, performed within the 3-year period before the date of the Project Agreement, demonstrating that the LMA sponsor is credit worthy.
 - If the LMA sponsor is relying on non-guaranteed debt (such as a particular revenue source), an analysis that demonstrates that the projected revenues or proceeds are certain and are sufficient to cover the LMA sponsor's stream of costs through time.
 - If the LMA sponsor is relying on third-party contributions, comparable data for the third party and evidence of its legal commitment to the LMA sponsor.
 - A list of all cash reserves and any planned uses of these reserves.
 - If the applicant needs to obtain loans, information about the loans, including a description of the repayment method.
 - Audited financial statements for the LMA sponsor's last 3 years of operations.
- A statement of revenues describing all funding sources for the project and characterizing each as committed or anticipated, with a description of the likelihood of realizing the

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anticipated amounts. If the funds of certain sources are limited to certain parts of the project, those limits must be described.

- A financial schedule showing the source and amount of each payment of the LMA sponsor's share anticipated under DWR's estimate and schedule.
- Identification of risks to revenue sufficiency and potential mitigation actions should the risk be realized.

With respect to the LMA sponsor's obligation to operate, maintain, repair, rehabilitate, reconstruct, and replace the project under the terms of its agreement with the Board, the Financial Plan must include:

- Evidence that the LMA sponsor is financially able to properly operate and maintain the completed project.
- A summary of the O&M cost for the LMA sponsor's current flood management facilities.
- Identification of the source of revenue to fund O&M costs.
- An estimate of O&M costs after completion of the project.
- An estimate of the impact of these costs on the LMA sponsor's current O&M budget.
- Identification of a source of funds to address any additional O&M costs that may result from the project.
- An estimate of the costs for repair, rehabilitation, reconstruction, and replacement of the project.
- Evidence that the LMA sponsor has a sound financial strategy to fund required repair, rehabilitation, reconstruction, and replacement of the project.

2.2 Maintenance Plan

If DWR determines that the FSRP repair project necessitates revisions to the O&M requirements, the LMA must provide a Maintenance Plan satisfactory to DWR. The Maintenance Plan will become an appendix of the Project Agreement. It must be submitted before the Project Agreement is executed. The Maintenance Plan must include:

- A description of the facilities and properties to be maintained.
- The name of the maintaining agency.
- A provision requiring the LMA sponsor to maintain the completed project in perpetuity or until DWR agrees in writing that the project is no longer needed and maintenance is no longer required.
- A description of periodic maintenance activities that will be performed, and the frequency and timing of performance.
- Disclosure of the source of funds for the maintenance.
- A certification, under penalty of perjury, that the LMA sponsor can pay for maintenance of the project facilities from funds available to the LMA sponsor.

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- A provision requiring the LMA sponsor to provide annual pictorial reports to DWR each year between July 1 and July 15 describing the maintenance activities performed during the year and any maintenance problems that exist.
- LMA sponsor's assurance that the maintenance measures or repairs DWR deems necessary will be promptly performed.

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3.0 ADDITIONAL PROVISIONS FOR FSRP REPAIR PROJECTS PERFORMED BY THE LMA SPONSOR

Project Agreements for projects performed by the LMA sponsor will include additional provisions suitable for the project conditions. DWR will provide the LMA a list of required documents to be submitted to DWR as required components of the Project Agreement. The requirements of the Project Agreement will vary depending on the type, size, and complexity of the eligible repair project. The required Project Agreement documentation for projects implemented by an LMA are described below and in the following sections.

- The LMA sponsor shall provide evidence that it has acceptable labor compliance procedures in place.
- Before beginning project construction work, the LMA sponsor must receive an approval letter, as described in Section 2.2.4.1 of the draft Guidelines, approving the Project Agreement and allowing construction to begin.
- The LMA sponsor must make progress reports to DWR, as described in Section 3.2, as a prerequisite to each disbursement, and DWR will monitor progress and may withhold up to 100 percent of the currently requested payment if progress is not satisfactory.
- Payments to the LMA sponsor will be made upon completion of previously identified milestones or on a frequency basis that would be no more often than monthly but at least quarterly in arrears upon receipt of invoices and progress reports.
- A work plan, including a project schedule and costs, as described in Section 3.1.
- A requirement that the LMA sponsor submit progress reports as described in Section 3.2 and a written final project report as described in Section 3.3.
- A provision that individual contract items or task costs may not overrun or changed without written approval from DWR.
- A provision that, if there is a cost overrun with respect to an individual contract item or task of no more than 20 percent of the original estimate, DWR may authorize the use of any available contingency fund or reallocation of unexpended funds for other individual contract items or tasks.
- A provision that, if there is a cost overrun or decrease in allocated funds that exceeds 20 percent of the amount originally estimated for an individual contract item or task, the LMA sponsor and DWR may agree to amend the Project Agreement.
- A provision that DWR may inspect the repair project at any reasonable time to ensure it is being carried out in accordance with the work plan.
- A provision that DWR may inspect the repair project at any reasonable time after completion to ensure that it is being properly maintained.
- Documentation of compliance with all applicable environmental laws (CEQA, and NEPA if federal funding or approvals are included or needed in the project) as required in Section 4.3 of the draft Guidelines.

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3.1 Work Plan for LMA Sponsor-Implemented Projects

An LMA sponsor must develop a work plan that is satisfactory to DWR and that includes:

- A work breakdown showing and describing all contract items and tasks expected to occur during the project. The work breakdown shall include:
 - A clear scope of work for design, environmental permits, and right-of-way work.
 - Construction work listed by contract item, and described as the project would be advertised to a contractor.
 - Contract administration may be listed as a separate task.
- A work schedule in a format acceptable to DWR.
- An estimate of:
 - Cost to perform the design.
 - Cost to acquire environmental permits and right-of-way clearances.
 - Cost of each construction contract item and task.
 - Amount of each construction contract item and task that will be funded using state funds.
- The estimate must have all costs assigned to contract items or tasks.
- Contract administration may be listed as a separate task, or may be included in each item related to such costs.
- No more than 10 percent of the total cost of all described contract items and tasks may be shown in the estimate as a contingency fund.
- A definition of project milestones if payment is to be made upon milestone completion.

To help the LMA sponsor develop a work plan, DWR may visit the project site to assess its conditions and needs. DWR may confer with the LMA sponsor and other local officials with an interest in the project to convey recommendations and exchange information.

The LMA sponsor may revise the work plan from time to time during the term of the Project Agreement, but only with the approval of DWR. Revision of the work plan may result in a revision of the funding amount, the cost-shares, or both, and may require the approval of the Department of General Services. Additional conditions for revisions to the work plan are provided in Section 5.0 of the draft Guidelines.

3.2 Progress Reporting

A LMA sponsor that is constructing an FSRP repair project will be required to submit progress reports during construction in sufficient detail to substantiate reimbursable expenses. The report will be a key item in evaluating requests for reimbursements; reimbursement requests will only be considered for periods of work for which an acceptable progress report was received. Reimbursement requests will be subject to the following requirements:

- The minimum period between reimbursement requests will be 1 month.

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- Progress reports will be required monthly unless otherwise stated in the Project Agreement. The maximum reporting period will be 3 months (quarterly).
- For projects with Project Agreements that establish milestones, a report shall be made when each milestone is completed.
- The time periods covered by successive progress reports shall be continuous and shall not overlap.
- Progress reports shall include the following information:
 - Records of expenditures (cumulative and by reporting period).
 - Description of activities since the previous report.
 - Status of the project relative to the progress schedule.
 - An estimated percentage of completion of the work.
 - The percentages of state and total funding expended.
 - Description and justification of any use of contingency funds.
 - Key technical, engineering, construction, environmental, legal or other issues that must be resolved and their impact on project schedule and constructibility.
 - The time period covered by the report.
 - A proposed new schedule for DWR's consideration if the current schedule is no longer achievable.

The Department of Finance may also require more frequent reporting. Project Agreements will provide that DWR can change reporting requirements at any time to ensure that the information needs of the Department of Finance are met.

3.3 Final Project Report

Within 90 days after the project is completed, the LMA sponsor shall submit a final project report to DWR, which shall include:

- An executive summary not exceeding two pages.
- Records of expenditures.
- A detailed accounting for contingency fund deposits, expenditures, and balances.
- A comparison of the original schedule and the actual schedule.
- A discussion of problems that occurred during the work and how the problems were resolved.
- Submittal of any required products that have not been submitted previously.
- A listing of required products previously submitted, with dates of submittal and dates of DWR's approval.
- Any mapping or spatial products produced as part of the project (see Section 3.5).
- Photographs of the before-project condition.
- Progress photographs showing project activities and techniques.
- Photographs of the completed project.

- As-built plan drawings.
- A revised Maintenance Plan, approved by DWR, as described in Section 2.2 of these draft Guidelines.

3.4 Record-Keeping Requirements

An LMA sponsor will be required to maintain all records and documents pertaining to a project for 5 years after completion of the work required or as otherwise required under relevant funding guidelines or regulations, whichever is longer, and to make all records and documents held by the LMA sponsor pertaining to the project available for inspection and audit by DWR, the State Auditor, or other state officials during normal business hours, both during the repair project and in the 5 years following completion of the work.

DWR or state auditors may audit the records of the project at any time within 3 years after final payment of state funds.

3.5 Project Mapping and Spatial Information

Any mapping or spatial products produced as part of an FSRP repair project must be included with the final project report. At a minimum, the following spatial information must be collected and submitted to DWR:

- The location of test sites, bore holes, constructed improvements, and distinct project features.
- The elevation of any constructed or surveyed feature.
- Boundaries, such as parcel data and construction limits.

Spatial data may be created by field methods, including use of a geodetic survey, global positioning system, or by scanning maps, digitizing, aerial photography, remote sensing, photogrammetry, or combining two or more data sets.

Spatial data shall be mapped at a scale appropriate to the source data. The creation and editing of spatial data shall use any available logical constraints. The LMA sponsor shall provide a statement about how the spatial data was created, checked, and processed. Each spatial product submitted must describe the projection and include information on the coordinate system and the vertical and horizontal datum used.

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4.0 INDEPENDENT REVIEW

Independent reviews will be required for all FSRP repair projects regardless of Project Agreement conditions and is to be defined in the project work plan (Section 3.1) unless otherwise directed by DWR.

4.1 LMA Sponsor-Led Projects

For LMA sponsor-led projects, DWR will require an independent review of all work products beginning with data acquisition and continuing through project completion. DWR, at its sole discretion, may waive this requirement or choose to provide the independent review internally. DWR is unlikely to grant a waiver of the independent review requirement when one or more of the following factors apply:

- Failure of the project would pose a significant threat to human life or critical infrastructure.
- The project involves the use of non-standard materials, techniques or designs.
- The project design does not incorporate a conservative design or redundancy to enhance reliability.
- The project has a unique construction sequencing (such as design/build) or an accelerated schedule.
- The project is being approved by USACE under U.S. Code, Title 33 (33 USC) § 408.

In performing the independent review, DWR will apply, at its discretion, one of two approaches. In order of DWR preference, these approaches are:

Approach 1: DWR selects a panel of independent reviewers and administers an independent review.

DWR issues the charge to the panel of independent reviewers and, in consultation with the LMA sponsor, ensures that the charge is fulfilled. Under this approach, the independent review costs will be part of the eligible project costs. Throughout the process, DWR must consult with the LMA sponsor. At the discretion of DWR, the LMA sponsor may propose more detailed instructions to be included in the charge to the panel to ensure that project-specific technical issues are addressed.

Approach 2: At its sole discretion, DWR may allow the LMA sponsor to select the panel of independent reviewers.

DWR must review and approve the reviewers selected by the LMA sponsor as being appropriate for the project. DWR issues the charge to the panel of independent reviewers, and the LMA sponsor, in consultation with DWR, ensures that the charge is fulfilled. Costs associated with this approach are eligible project costs and are to be cost-shared in the same manner as all other eligible project costs. Throughout the process, the LMA sponsor must consult in good faith with DWR.

The independent review panel must be comprised of at least two and no more than five individuals, with more reviewers (up to five) required for larger and/or more complex projects at the discretion of DWR. DWR must approve the number of reviewers assigned to an

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independent review panel. Reviewers must be individuals who are distinguished experts in engineering, hydrology, or other appropriate discipline. Individual independent reviewers may be associated with firms, but all independent review work must be performed by the individual reviewer. Reviewers must be free from any real or apparent conflict of interest.

DWR may develop a list of consultants qualified to sit on independent review panels. LMA sponsors may propose consultants who are not on that list, and DWR will review these suggestions using the same criteria it employs to develop the initial list. DWR may approve those consultants who qualify and add them to the pre-approved list.

For reviews associated with work under 33 USC § 408, DWR may impose additional review requirements as needed to comply with federal guidance for complying with 33 USC § 408.

An independent review will include a review of all the LMA sponsor's pre-project activities for which credit is requested, and will include periodic reviews before, during and after construction on a regular schedule sufficient to inform DWR about the adequacy, appropriateness, and acceptability of the design and construction activities for the purpose of assuring public health, safety, welfare, and the environment. DWR and the LMA sponsor shall cooperate to ensure that reviews under do not create any unnecessary delays in design and construction activities. At a minimum, all independent reviews must consider applicable USACE requirements and DWR's current or future rural levee repair standards or the Urban Levee Design Criteria (DWR, 2012), when applicable.

Independent review shall be conducted in collaboration with DWR. DWR shall be promptly notified and invited to all meetings of the panel, and shall be provided opportunity to collaboratively develop the agenda and questions for each meeting in consultation with the LMA sponsor. All documents provided to and delivered from the panel of reviewers shall be promptly provided to DWR.

DWR retains sole discretion to require the LMA sponsor to implement the recommendations of the independent review panel. If DWR requires changes that affect the final construction of the project, such changes will be cost-shared according to the cost-sharing rules established in the Project Agreement. Such changes may not require an immediate amendment to the Project Agreement; however, changes increasing the maximum state cost-share will require an amendment to the Project Agreement before they can be funded.

Written recommendations of a reviewer or panel of reviewers under this section and the responses of the LMA sponsor and DWR (if any) shall be available to the public on DWR's FloodSAFE website at <http://www.water.ca.gov/floodsafe/>.

4.2 DWR-Led Projects

The extent of any independent review for DWR-led projects will be determined during the development of the Project Agreement and will be dependent on the size and complexity of the project. They will be generally consistent with the effort described for LMA-led projects in Section 4.1. The Project Agreement will identify the extent to which the LMA will participate in the review and approval of project design, other deliverables, and project activities.

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APPENDIX C

**Provisions for Credit and Disbursement of
Funds**

1.0 INTRODUCTION

The following text describes the required provisions for obtaining credit and disbursement of funds under the Flood System Repair Project (FSRP) as defined in the draft Guidelines.

2.0 REQUIREMENTS FOR OBTAINING CREDIT

Under the FSRP, and at the sole discretion of Department of Water Resources (DWR), credit may be issued to the Local Maintaining Agency (LMA) sponsor for a portion of pre-project costs. The LMA sponsor may only use approved credit to reduce the local share of eligible project costs. Approved credit is an acknowledgement that the LMA sponsor has incurred expenses that could have been covered if a Project Agreement had been in place. It does not entitle the LMA sponsor to payment. DWR will require an independent review of each project for which the LMA sponsor requests credit. The independent review process is described in Appendix B of the draft Guidelines.

To qualify for credit, the following conditions must be met:

- The request for issuance of credit must be submitted to DWR within 45 days after execution of the Project Agreement.
- Costs requested for credit must be incurred after DWR has issued an Eligibility Notice to the LMA for the project and before a Project Agreement is executed, or costs must represent unused credit that has been issued by DWR for another project under substantially the same terms as described in this section.
- The eligible work or expenditure that generates credit must be specific to the damage necessitating the repair, and must be directly related to the planning, design, or construction of the FSRP repair project as negotiated in the Project Agreement.
- Costs requested for credit must be for work performed in full compliance with all applicable federal, state, and local requirements. DWR, at its sole discretion, may waive this prohibition, particularly where an LMA's failure to secure a required permit was inadvertent. However, credit will not be offered for any costs incurred without all permits required by the Central Valley Flood Protection Board.

Costs offered for credit will be subject to the following limitations:

- Total credit issued may not exceed the LMA's share of the total project cost.
- Total credit used plus DWR's share of the total project cost may not exceed 95 percent of the total project cost.
- Total credit issued for prior projects against an FSRP repair project will be limited to the full- or limited-share costs that would have applied on the project for which it was issued.
- Credit issued for an FSRP repair project that cannot be applied to the project, or that cannot be applied due to availability of funding, may be retained and used for another project, under the same conditions as those of the project for which it is issued plus any additional conditions of the other project.

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3.0 REQUIREMENTS FOR DISBURSEMENT OF FUNDS

DWR may enter into a Project Agreement before the responsible party has obtained all applicable permits, but will not disburse any state funds unless

- The LMA sponsor is in compliance with provisions of the Project Agreement.
- Has complied with all applicable federal, state, and local laws, rules and regulations.
- Has obtained all permits that it is required to obtain.

To receive disbursements under the Project Agreement, the LMA sponsor must meet certain other requirements. Specifically, the LMA sponsor must formally acknowledge the current flood risk and make arrangements for other local agencies to acknowledge the current flood risk through a resolution or resolutions adopted and signed by the governing bodies of all affected cities, counties, and other agencies with flood management responsibilities located in the areas protected by the project. The resolution or resolutions must be accepted by the state in advance of adoption as to matters of both form and substance. The Project Agreement may be nullified at the sole discretion of DWR if the resolution is modified or rescinded without acknowledgement and acceptance of DWR. An LMA sponsor's application for credit or reimbursement from the federal government will not be a standard requirement for an LMA sponsor to receive disbursements for FSRP repair projects. However, DWR reserves the right to require an LMA sponsor to file an application for federal credit or reimbursement for select FSRP repair projects that may be identified to an LMA sponsor during negotiation of the Project Agreement.

3.1 Conditions of Reimbursement

State reimbursements for FSRP repair project construction will be paid to LMA sponsors as provided in the Project Agreement, which will include cost-share provisions and detailed instruction on billing and reimbursements. Project Agreements will include the provisions in the remainder of this section. If necessary in the sole judgment of DWR, the state may make funding available earlier or in a different manner to ensure that funds will be available to an LMA when needed for construction work. Conditions for advanced payment, if applicable, will be negotiated during the Project Agreement. General provisions for advanced payment are provided in Section 3.2.

State reimbursement of LMAs will be in arrears at least quarterly but no more often than monthly at DWR's discretion, subsequent to submittal and approval of reimbursement requests (i.e., invoices) and progress reports. The LMA sponsor must submit reimbursement requests in duplicate on a summary billing form provided by DWR. DWR's summary billing form will provide a continuous record of payments, retained amounts, and other data. The LMA sponsor must provide the following information:

- The amount requested for payment, before retention, for each item or task.
- The total amount requested.
- The LMA sponsor's request number.
- The state contract number.

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- The date of submittal.
- The beginning and end dates of the work covered by the requested payment. The time periods covered by successive invoices must be continuous and may not overlap without detailed explanation of any billed work attributed to past work periods, establishing the appropriateness and non-duplicative nature of the charges.
- An original signature of the LMA sponsor’s officer requesting payment on both copies, in an ink colored other than black.
- One copy of records substantiating the requested payment.
- DWR will return one copy of the summary billing form to the LMA sponsor, completed with cumulative payment and retention information and other information added by DWR.

State reimbursement is subject to the following limitations:

- DWR will apply a maximum state funding of \$5,000,000 per project. DWR’s Director may authorize variances to this restriction to fund projects under exceptional circumstances.
- No more than 10 percent of the total project cost may be reimbursed as a contingency, and only as such funding is justified, except with the express written approval of DWR.
- Contingency funds may only be used for an item or task in the Project Agreement with prior written approval from DWR. If the contingency funds are to be used for work other than the items or tasks in the Project Agreement, the LMA sponsor must first obtain the express written approval of DWR.
- The LMA sponsor must describe and justify the proposed use of any contingency funds, including identification of the contract item or task, in the required progress reports.
- If contingency funds are not available, cost overruns for individual contract items or tasks will be covered only to the extent to which reallocation of unexpended funds from other contract items or tasks is permitted under the Project Agreement.
- All reimbursement is subject to availability of funds.
- Funds will not be disbursed to reimburse costs incurred by the LMA sponsor unless the LMA sponsor is in compliance with all applicable environmental laws and requirements (e.g., CEQA, environmental permits, and NEPA if federal funding or approvals are included in the project).
- Funds will not be disbursed to reimburse costs incurred by the LMA sponsor until all required permits for the work to be reimbursed have been obtained.

3.2 General Conditions for Advance Payments

At the sole discretion of DWR, eligible project costs may be covered by advanced payments of the state cost-share to be negotiated with the LMA during development of the Project Agreement. Advances, if applicable, may be limited to specific project-related tasks required prior to project construction, such as the acquisition of property rights. When advanced payments are applied to project construction, the Project Agreement will include requirements for the LMA sponsor submit work plans at quarterly or otherwise specified intervals. Along with the work plan, the LMA sponsor will be required to provide statements of incurred eligible project costs. If the state determines advances in that advance funding

period exceed actual costs in that same period, such amounts may be applied against advances in succeeding periods. The state's total amount of all advance payments shall not exceed 75 percent of the total estimated cost in the state's share of eligible project costs payable under the Funding Agreement.

If the state determines that advances exceed the state's share of total actual eligible project costs, the state may withhold advance payments equal to amounts advanced in excess of the state's share of eligible project costs, but only after an LMA sponsor has had an opportunity to meet and discuss with the state any alleged excess payments. Any advance payments that exceed the state's share of actual eligible project costs shall be reconciled and repaid to DWR at the end of each quarter. All advance payments will be used only to pay eligible project costs for performing all or part of a task or item in the FSRP repair project's budget.

3.3 Retention

DWR will retain 5 percent of all approved payments to assure satisfactory completion of individual items or tasks. The approved completion of items or tasks will be the basis of reimbursement of retained funds. No reimbursement of retention will be made for subtasks, partially completed items, or partially completed tasks.

When all work associated with an item or task described in the work plan has been completed to the satisfaction of DWR, and all required products for that item or task have been submitted to and approved by DWR, an LMA sponsor may, upon written request, receive payment of retained funds. DWR, at its sole discretion, may pay the retained funds for that item or task to the LMA sponsor. After the retained funds for an item or task have been paid, no further payment will be made for that item or task.

3.4 Final Payment

DWR will notify an LMA sponsor that the project is approved and will release any remaining retained funds when the following criteria are satisfied:

- The work is completed to the satisfaction of DWR.
- DWR has approved all products required by the Project Agreement as provided by the LMA sponsor.
- The LMA sponsor has provided, and DWR has approved, a final project report as described in Appendix B of the draft Guidelines.
- Transfer of any property rights to the state, if applicable, are completed.

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APPENDIX D

Cost-Sharing Examples

Cost-Sharing Example 1: Little River Levee Project

Assume that an Local Maintaining Agency (LMA) is negotiating a Project Agreement with Department of Water Resources (DWR) under the Flood System Repair Project (FSRP) for the Little River Levee Project involving repairs to a seepage berm with an estimated total project cost of \$1,000,000. The repair will be adjacent to the intersection of two state highways, which would receive a significant increase in flood protection upon project completion. The project also includes \$70,000 for improvements to a parking area and access road to a boat launch facility adjacent to the repair.

Under the DWR Cost-Share Formula, the base state cost-share is 50 percent. In addition, the modifications to the parking area/access road and the increased protection to two state highways qualify the project for increased state cost-share associated with the recreation and state facilities objectives, respectively, of the DWR Cost-Share Formula. The \$70,000 cost for these parking area/access road improvements represents between 5 and 10 percent of the total project cost, which qualifies the project for a 5 percent increase in the state cost-share due to contributions to the Recreation Objective. The increased flood benefit to two state facilities qualifies the project for a 10 percent increase in the state cost-share due to contributions to the State Facility Objective.

Thus, the revised state cost-share for the Little River Levee Project with respect to the DWR Cost-Share Formula is:

Base state cost-share:	50 percent
Increased state cost-share due to contribution to Recreation Objective:	5 percent
Increased state cost-share due to contribution to state Facilities Objective:	10 percent
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Total revised state cost-share:	65 percent

The LMA has requested enhanced cost-share as defined in Section 4.4.2 of these draft Guidelines. DWR has reviewed available maintenance and inspection data and additional information provided by the LMA, and has determined that the LMA has acceptable performance with the exception of:

- Several of the LMA's maintenance staff have not completed flood fight methods and environmental awareness training
- The LMA's rodent abatement management program is minimally acceptable
- The LMA's 5-year plan for routine/non-routine maintenance is lacking in several minimum requirements.

The LMA has also signed a Memorandum of Understanding under which it is a participating agency in the development of a Regional Flood Management Plan as a component of the Central Valley Flood Protection Plan.

The Little River Levee Project qualifies for enhanced state cost-share specific to the FSRP as a result of these activities as described in Section 4.4 of the draft Guidelines. Table D-1 summarizes the LMA's rating score and weighted score. The score is 32 with an LMA Maintenance Quality Index of 26, which means the project qualifies for a 26 percent increase in state cost-share. However, these draft Guidelines limit the total increased state cost-share for all cost-share enhancements other than those related to the Disadvantaged Area Objective of the DWR Cost-Share Formula to 35 percent. Therefore, although the project meets the criteria for a 91 percent state cost-share (65 percent plus 26 percent), the Project Agreement for the Little River Levee Project would reflect a state cost-share of 85 percent and an LMA cost-share of 15 percent.

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Table D-1. Cost-Share Incentive Performance Score – Little River Levee Project				
No.	Criteria Description	Rating Score	Weight Factor	Weighted Score
LMA - Reporting Performance per CWC §9140				
1	Information known to local agency that is relevant to the condition or performance of Project Levee (or jurisdictional Non-project Levee).	2	0.5	1
2	Information identifying known conditions that might impair or compromise the level of flood protection provided by the Project Levee (or jurisdictional Non-Project Levee)	2	1	2
3	A summary of maintenance performed by the LMA during the previous fiscal year.	2	1	2
4	A statement of planned work and estimated cost for operation and maintenance of the Project levee (or jurisdictional Non-Project Levee) for the current fiscal year, as approved by the LMA.	2	0.5	1
LMA - Emergency Response Preparedness				
1	Develop and publish Emergency Action Plan or Flood Safety Plan.	2	2	4
2	Active participation in annual flood pre-season coordination meetings with the Flood Operations Center, the Sacramento County Office of Emergency Services, USACE, and other agencies.	2	2	4
3	Training of all LMA staff and contractors likely to respond to flood emergencies in: a) Standardized emergency management system, national incident management system, and incident command system (SEMS/NIMS/ICS) introduction; b) Flood Fight Methods; and c) Environmental Awareness	0	1	0
LMA - Operation and Maintenance				
1	All-weather access road to support emergency flood fight response.	2	1.5	3
2	Rodent abatement program, entailing an effective plan, financial resources, practice, and inspections.	1	1	1
3	Vegetation management in compliance with current DWR standards and policies.	2	1	2
4	Encroachment management: inspections, evaluations, and enforcement.	2	1	2
5	Routine maintenance of flood control facilities.	2	2.5	5
6	Participation in a Corridor Management Strategy (see 2012 CVFPP - p. 4-8 and Att. 2, p. 5-23) or similar planning effort.	2	1.5	3
7	5-year plan for routine and non-routine maintenance projects. The plan should include, at minimum, a list of prioritized projects, schedule, annual budgets.	0	1.5	0
LMA – Participation in State Systemwide Investment Approach				
1	Participation in Regional Flood Management Planning Initiative, IRWM region, or other multi-benefit project	2	1.0	2
2	Collaboration with LMA's in same Region or Leveed Area	0	1.5	0
Total weighted score:				32
Minus minimum qualifying score for FSRP cost-share enhancement:				-6
LMA Maintenance Quality Index (MQI) Score (Max = 35):				26

¹Rating Scores: Not acceptable = 0; Minimally-acceptable = 1; Acceptable = 2

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Cost-Sharing Example 2: Levee District X Project

Assume that an LMA is negotiating a Project Agreement with DWR under the FSRP for the Levee District X Project which will involve work at a number of sites along a small levee district's facilities to address erosion and seepage as well as upgrades to a pump station that has been found to be insufficient for the design capacity. The levee district encircles a small town and adjacent farmlands, all of which would receive flood control benefits from the project. The estimated total project cost is \$3,000,000. Under federal funding, a \$5,000,000 riparian habitat restoration project has recently been completed adjacent to one of the seepage sites that would be repaired by this project. The LMA is proposing to negotiate a conservation easement with a willing landowner within the levee district adjacent to the restoration site as an open space buffer. The cost of the conservation easement is \$350,000. At the time of Project Agreement negotiations, the California median annual household income is \$61,000 and the benefited area's median annual household income is \$43,000. Under the DWR Cost-Share Formula, the base state cost-share is 50 percent. The project does not qualify for credit for any part of the \$5,000,000 riparian habitat restoration project because the project was fully funded by federal sources. However, the conservation easement qualifies the project for increased state cost-share associated with the Open Space Objective of the DWR Cost-Share Formula.

The \$350,000 cost of the easement represents between 10 and 15 percent of the total project cost, which qualifies the project for a 10 percent increase in the state cost-share due to contributions to the Open Space Objective. The project also qualifies for increased state cost-share under the Disadvantaged Area Objective Enhancement of the DWR Cost-Share Formula.

The benefited area's median annual household income is 70.5 percent of the California median annual household income ($\$43,000/\$61,000 = 70.5$ percent). The benefited area's median annual household income is 9.5 percent less than the 80 percent threshold for disadvantaged household income. Rounding to the nearest 10 percent, the project qualifies for a 10 percent increased state cost-share under the Disadvantaged Area Objective Enhancement of the DWR Cost-Share Formula.

The revised state cost-share for the Project with respect to the DWR Cost-Share Formula is:

Base state cost-share:	50 percent
Increased state cost-share due to contribution to Open Space Objective:	10 percent
Increased state cost-share due to contribution to Disadvantaged Area Objective:	10 percent
<hr/>	
Total revised state cost-share:	70 percent

The LMA has requested enhanced cost-share pursuant to Section 4.4.2 of these draft Guidelines. DWR has reviewed available maintenance and inspection data and additional information provided by the LMA, and has determined that the LMA has acceptable performance with the exception of:

- The levee access roads are minimally acceptable for flood fighting purposes
- The LMA's 5-year plan has deficiencies and is considered minimally acceptable

The Levee District X Project qualifies for enhanced state cost-share specific to the FSRP as a result of these activities as described in Section 4.4 of the draft Guidelines. Table D-2 summarizes the LMA's rating score and weighted score. The weighted score is 32, with an LMA maintenance quality score of 26, which means the project qualifies for a 26 percent increase in state cost-share.

The total base state cost-share and all state cost-share incentives under both the DWR Cost-Share Formula and the FSRP cost-share incentive is 96 percent (i.e., 70 percent plus 26 percent). However, the DWR Cost-Share Formula and these draft Guidelines limit the state cost-share to no more than 90 percent for disadvantaged areas. Therefore, although the project meets the criteria for a 96 percent state cost-share, the Project Agreement with Levee District X would reflect a state cost-share of 90 percent and an LMA cost-share of 10 percent.

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Table D-2. Cost-Share Incentive Performance Score – Levee District X Project				
No.	Criteria Description	Rating Score	Weight Factor	Weighted Score
LMA - Reporting Performance per CWC §9140				
1	Information known to local agency that is relevant to the condition or performance of Project Levee (or jurisdictional Non-project Levee).	2	0.5	1
2	Information identifying known conditions that might impair or compromise the level of flood protection provided by the Project Levee (or jurisdictional Non-Project Levee)	2	1	2
3	A summary of maintenance performed by the LMA during the previous fiscal year.	2	1	2
4	A statement of planned work and estimated cost for operation and maintenance of the Project levee (or jurisdictional Non-Project Levee) for the current fiscal year, as approved by the LMA.	2	0.5	1
LMA - Emergency Response Preparedness				
1	Develop and publish Emergency Action Plan or Flood Safety Plan.	2	2	4
2	Active participation in annual flood pre-season coordination meetings with the Flood Operations Center, the Sacramento County Office of Emergency Services, USACE, and other agencies.	2	2	4
3	Training of all LMA staff and contractors likely to respond to flood emergencies in: a) Standardized emergency management system, national incident management system, and incident command system (SEMS/NIMS/ICS) introduction; b) Flood Fight Methods; and c) Environmental Awareness	2	1	2
LMA - Operation and Maintenance				
1	All-weather access road to support emergency flood fight response.	2	1.5	1.5
2	Rodent abatement program, entailing an effective plan, financial resources, practice, and inspections.	1	1	1
3	Vegetation management in compliance with current DWR standards and policies.	2	1	2
4	Encroachment management: inspections, evaluations, and enforcement.	2	1	2
5	Routine maintenance of flood control facilities.	2	2.5	5
6	Participation in a Corridor Management Strategy (see 2012 CVFPP - p. 4-8 and Att. 2, p. 5-23) or similar planning effort.	2	1.5	3
7	5-year plan for routine and non-routine maintenance projects. The plan should include, at minimum, a list of prioritized projects, schedule, annual budgets.	1	1.5	1.5
LMA – Participation in State Systemwide Investment Approach				
	Participation in Regional Flood Management Planning Initiative, IRWM region, or other multi-benefit project	0	1.0	0
	Collaboration with LMA's in same Region or Leveed Area	0	1.5	0
Total weighted score:				32
Minus minimum qualifying score for FSRP cost-share enhancement:				-6
LMA Maintenance Quality Index (MQI) Score (Max = 35):				26

¹Rating Scores: Not acceptable = 0; Minimally-acceptable = 1; Acceptable = 2