

Early Implementation Program (EIP) Draft Guidelines - Response to Comments Summary Table

Agency/Affiliation:	LA County Flood Control District	Address Not Provided	By: E-Mail	Date: 10/31/2008
Sent By: Kathi Delegal, Grants Manager		E-mail: KDelegal@dpw.lacounty.gov		

Comment Number	Agency / Affiliation	Comment	Response
1	LA County Flood Control District	EIP Program Guidelines should be expanded to include programs and projects outside of the Central Valley. Requesting that Stormwater Flood Management Projects that meet Disaster Preparedness and Flood Prevention Bond Act of 2006 be eligible for early implementation.	<p>Proposition 1E Section 5096.821(a) and (b), the funding source for this program, is limited to repair or improvement work on Facilities of the State Plan of Flood Control. Such facilities are, by definition, only found in the Sacramento-San Joaquin Valley. Other DWR Programs such as the Local Levee Urgent Repair Program serve programs and projects outside of the Sacramento-San Joaquin Valley.</p> <p>Stormwater Flood Management Projects are administered through a separate section of Proposition 1E (Section 5096.827).</p>
2	LA County Flood Control District	The 200-year frequency should be removed from these Guidelines. If these Guidelines are used outside the CV this 200-year requirement should be removed since it has not been adopted outside the State Plan for Flood Control.	<p>Proposition 1E funds available for this program are limited to Repair or Improvement Projects on Facilities of the State Plan of Flood Control. Such facilities are, by definition, only found in the Sacramento-San Joaquin Valley. Other DWR Programs such as the Local Levee Urgent Repair Program serve programs and projects outside of the Sacramento-San Joaquin Valley.</p>

Agency /Affiliation:	California Central Valley Flood Control Association	910 K Street, Suite 310, Sacramento, CA 95814	By: Letter	Date: 10/20/2008
Sent By: Melinda Terry, Executive Director		E-mail: Melinda@cvflood.org		

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1	California Central Valley Flood Control Association	<p><u>Programmatic Concerns:</u> These Draft Guidelines present a conflict where DWR encourages grants to increase flood protection, but also requires Applicants to secure the maximum feasible Federal and local matching funds. These goals present a clear conflict to DWR and likely contribute to more restrictive guidelines. This requirement should be tempered by the other requirements in Proposition 1E that state "...to the extent that this does not prohibit timely implementation of this article".</p> <p>It's our belief that assuring the maximum cost share from Federal and local funding will eliminate or discourage some projects. In combination and cumulatively, these requirements may screen out worthy projects and prevent the State from decreasing liability.</p>	<p>Proposition 1E requires the Department to balance somewhat competing notions of securing maximum federal and local cost-sharing and ensuring timely implementation of needed flood protection work. The cost-sharing formula established by these <i>Guidelines</i> reflects the Department's attempt to achieve that balance. Repair projects in a Non-Urban Area qualify for 85% cost sharing, far more than they would otherwise receive under "normal" project financing (where the State pays a percentage of the non-federal share, usually amounting to no more than 35% of the Project cost). Repair and Improvement Projects that increase flood prevention in an Urban Area can qualify for 70% cost-sharing (or higher if the project incorporates a Setback Levee). This is at least double what a Project would have received under the "normal" financing rules described above. This significant increase in State cost-share is intended to ensure that the most necessary Projects can move forward without waiting for federal assistance, but also allows for maximization of Proposition 1E funds by reserving funds for use in multiple Projects and by requiring local cost-sharing and strongly encouraging federal cost-sharing.</p>
2	California Central Valley Flood Control Association	<p><u>Programmatic Concerns:</u> The Guidelines recognize there may be a need to fund more than a single \$200 million project in an Area. But the requirement that <i>only</i> 2 projects per Area, created by separately examining the 100-year and 200-year projects, is unduly restrictive. Section 2096.821 of Proposition 1E states that there is a cap of \$200 million for levee improvements in urban areas. In contrast, there is no cap for levee repairs in urban and non-urban areas. Therefore, DWR is permitted to fund repairs to facilities of the State Plan of Flood Control in all areas with no regard to a cap.</p> <p>Suggest re-drafting of the Guidelines to allow funds to be awarded in following manner: First, fund repairs to the system</p>	<p>The Department agrees that there is no cap on spending for Repair Projects. As a result, the Guidelines will be modified to reflect that repairs included in an Area Project will not count against the \$200 million cap.</p>

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		<p>to the design LOP, with no cap on the amount of funds, in both Urban and Non-Urban areas. Second, fund work that increases the LOP in Urban Areas to 100-year protection with a cap of \$200M. Third, fund work that increases the LOP in Urban Areas to 200-year LOP with a cap of a further \$200M. This approach, supported by a plain reading of Prop 1E, will increase DWR's flexibility.</p>	
3	California Central Valley Flood Control Association	<p><u>Programmatic Concerns:</u> DWR's readiness criterion is very restrictive in light of the late date on which these Guidelines are being proposed. DWR proposes that an eligible project be ready to bid in June 2009, and except for a few projects with EIS/EIRs underway, this timetable simply cannot be met. The EIR/EIS process, including the Corps' Section 408 approval, appears to be a 10-16 month process. Further, the "readiness" requirement may be difficult to meet since the State and the Corps has not agreed on an acceptable procedure for performing hydraulic impact analyses. Yet, agreement on this procedure will be required to complete the EIS.</p> <p>It is understood that the State may not want to issue bonds until the fiscal year of construction but the Agencies seek certainty for this funding process. These Guidelines will be in place until the State Plan of Flood Control is adopted so it does not make sense to present a single deadline of 2009. Therefore, we recommend that DWR revise the final Guidelines to state that awards will be considered annually and that the deadline for being considered will consist of a completed NEPA and CEQA review by June of that year. Then, Agencies can plan for awards in 2010, 2011 and 2012.</p> <p>These same issues apply to the June deadline for a design grant. Few Agencies will have completed CEQA compliance by June 2009 and will therefore not be eligible for design grants. In addition, DWR is aware that a joint EIS/EIR is preferred by almost all Agencies involved in these flood protection improvement projects, which makes compliance</p>	<p>The Department will adjust the readiness requirement in the <i>Guidelines</i>. Projects should have environmental compliance completed in time for a Funding Agreement to be executed between DWR and the Local Agency in June 2009. In addition, the Project should be ready for construction to begin no later than November 2009. If there are funds remaining after all Eligible Projects that meet the minimum ranking score are funded, the Department reserves the right to issue a second PSP to solicit additional Projects, including those that may not have been "ready" by June 2009.</p>

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		with this deadline more difficult. It is, therefore, recommended that DWR acknowledge that the final Guidelines for design grants will be applicable to projects to commence in 2009 – 2011, with a June deadline in each year.	
4	California Central Valley Flood Control Association	<p><u>Programmatic Concerns:</u> Certain facilities should have a DWR cost share of 100% for the cost of repair or improvement. For example, where a facility described in the Water Code Section 8361 requires repair or improvement to protect an Area, the State should pay 100% of that cost. Another example includes lands designed to be inundated by the operation of the Sacramento or San Joaquin Flood Control Projects, but for which the State never acquired flowage easements.</p>	<p>The Department will revise the EIP <i>Guidelines</i> to eliminate the local cost-share requirement for Repair Projects on facilities described in California Water Code Section 8361. For Projects that include both repairs and improvements, or improvements alone, full cost-sharing will be required. This is consistent with past practice on federal projects.</p> <p>The EIP <i>Guidelines</i> allow purchase of flowage easements if such easements are necessary for the flood protection aspect of the Project, with full cost-sharing. Flowage easements that are not directly connected to the proposed EIP projects will not be funded. That said, the Department will revise the EIP <i>Guidelines</i> to allow up to 100% State funding for acquisition of property rights that have been a State responsibility and that are connected to an EIP project.</p>
5	California Central Valley Flood Control Association	<p><u>Programmatic Concerns:</u> DWR’s reliance on the draft AB 1147 regulations for cost-share for EIP is unduly restrictive. The AB 1147 regulations are not applicable to EIPs since the Guidelines deal with projects implemented by local Agencies not the Corps after Congressional authorization. DWR is not constrained by AB 1147 if an alternate approach is more sensible for some of the key considerations. DWR has invoked a literal reading of the term “State Water Supply Facilities” in a decision not to offer increased cost-share for flood protection of other water supply facilities. Similarly, “State Transportation Facilities” could apply to rail lines, ship channels and airports.</p> <p>A key goal of AB 1147 was to encourage an integrated multi-objective management approach, where integration and coordination of projects and project components serve more than a single purpose. For example, habitat and open space</p>	<p>The Department has designed the EIP <i>Guidelines</i> cost-sharing to parallel the AB 1147 requirements. While such parallelism is not required, this is the cost sharing provided by the Legislature and cost-sharing consistency is important.</p> <p>The Department interprets “State Facility” literally -- it means, for purposes of these <i>Guidelines</i>, facilities owned by the State.</p> <p>The Department considers the Supplemental Benefits important in their own right. Irrespective of whether a Supplemental Benefit is “added on” to increase cost-sharing on the flood aspect of the Project, or the Supplemental Benefit(s) are integrated into Project, the State will profit from the provision of the Supplemental Benefits. Moreover, there is a strong incentive to design Projects that truly integrate Supplemental Benefits into the flood protection work. To the extent Supplemental Benefits are integrated in the sense that they, too, are necessary for flood protection (and just happen to offer supplemental benefits), such work</p>

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		benefits were meant to be integrated <i>into</i> a project, not additions <i>to</i> a project. The decision to base the methodology on “incremental costs” may motivate local Agencies (seeking to minimize local cost share) to design projects which may ultimately be more costly for the State than truly integrated ones.	will be rewarded with increased cost-sharing, because all flood-necessary costs qualify for increased cost sharing.
6	California Central Valley Flood Control Association	<p><u>Specific Comments:</u></p> <p>a) Definition of EIP -- EIPs are projects funded by DWR pursuant to Propositions 1E and 84. This definition is inconsistent with the definition of EIP used in the draft Section 408 MOU under consideration by the State and the Corps where EIPs are projects to be implemented prior to the State Plan of Flood Control, whether or not the project is funded by the State.</p> <p>b) Definition of “Federal Feasibility Study Report” – This definition should be revised to include general reevaluation reports (GRR); limited reevaluation reports (LRR) and engineering documentation reports (EDR) within the family of reports that show feasibility of a federal project.</p> <p>c) Definition of “Funding Recipient” – Should be re-phrased to delete, “in the State of California, duly organized, existing and acting pursuant to the laws thereof” which is already within the term for a local Agency.</p> <p>d) Definition of “OMRR&R” – Should be revised to “operation and maintenance” since the CORPS only requires the assurance of operation and maintenance not repair, replacement and rehabilitation. Most local Agencies are not in the position to assure repair, replacement and rehabilitation and are not in the position to provide guarantees at this time.</p>	<p>a) The Department has clarified this definition to make it clear that it is for the purposes of the EIP program only.</p> <p>b) The Department has clarified this definition to incorporate this comment.</p> <p>c) The definition will remain the same.</p> <p>d) The Corps requires OMRR&R, and the State requires it on federal Projects sponsored by the State. No change will be made.</p> <p>e) The Department will change the definition to add “good will.” The Department will not add “devaluation due to uneconomic remainder” as it is an appraisal concept that should be handled through the appraisal process.</p> <p>f) The Department has refined this definition, adding after “required” the words “and authorized.”</p> <p>g) The Department will make the suggested change to the definition of “Repair Project.”</p> <p>h) The Department will make the suggested change to the definition of “Ring Levee”, but exchange the suggestion “in conjunction with” with “by connecting to.”</p> <p>i) The Department will make the suggested change to the definition of “Setback Levee.”</p>

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		<ul style="list-style-type: none"> e) Definition of “Real Estate Capital Outlay Costs” – Should be revised to add the following categories of real estate costs: (i) good will and (ii) devaluation due to uneconomic remainders. f) Definition of “Relocation Assistance Plan” – Should be revised to refer to the amount of financial assistance allowed under Federal and State law, and not only that “required” in light of the discretion given to the condemner under these laws. g) Definition of “Repair Project” – The phrase “restores a facility to a higher level of design” should be replaced with “results in the facility having a higher design level” since one cannot “restore” something to better than it was. Also, a repair project can be a portion of a larger project that includes improvements. h) Definition of “Ring Levee” – Should be revised to add the bold phrase and delete the word “to”: “A levee built which by itself or in conjunction with existing levees will encircle a particular asset or set of assets and provide them protection from flood risk”. i) Definition of “Setback Levee” – Should be modified to recognize the tie-ins of a setback levee are not “completely separate” from the existing levee. 	
7	California Central Valley Flood Control Association	<p>Pages 11 – 16: Eligible Projects and Components – This section should be redrafted to address a number of concerns as follows:</p> <ul style="list-style-type: none"> a) It is not clear why DWR is limiting the State’s cost share to only 50% of design projects. The federal government traditionally cost shares 75% of design work. The local agencies have very limited sources of revenue with which to match State funds and can better justify revenue-generating measures for 	<ul style="list-style-type: none"> a) The Department will handle cost-sharing for Design Projects similar to the way it does for Area Projects that are built one Element at a time. That is, the cost-share for the design work will be 50% because there is considerable uncertainty whether the Project will be constructed (and benefits realized) until a Project is funded for construction. If the design gives rise to construction of a Project that is awarded a state cost-share higher than 50%, the Department will adjust the cost-sharing of the construction Project to ensure that the Local Agency is “credited” for the

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		<p>construction than for design. DWR should fund design at the 75% level.</p> <p>b) DWR should revise the draft guidelines for repair projects in two important ways. First, DWR should clarify that overhead is an acceptable cost. Second, DWR has created a dichotomy stating that a project is either a repair project or an improvement project. DWR should recognize that a project may have elements that are repair or improvement elements. This approach would be similar to the way DWR proposes to treat elements constructed during a 100-year project that are actually for a 200-year project. DWR is being unduly restrictive by forcing a project into a repair or improvement category.</p> <p>c) For eligible improvement projects, DWR should revise the Guidelines to recognize that overhead is an acceptable cost, and in the fourth bullet, the word “add” should be changed to “address”.</p> <p>d) For Non-Eligible Projects or Components, DWR should allow cost sharing for the cost of CEQA and NEPA compliance. Most of the projects funded under the EIP Program will require Corps approval under Section 408. This is a substantial burden for the local agencies and DWR should cost share in these expenses.</p> <p>e) It is unclear why the State wants to exclude cost sharing for hydrologic, hydraulic and geotechnical investigations. These are legitimate and often significant costs associated with gathering sufficient information</p> <p>f) Regarding Area Plans and Area Project Spending Caps, DWR should revise the Guidelines in two important ways. First, it is not clear how DWR would</p>	<p>higher cost-share that the design work would have been awarded had the construction Project been funded with the design work.</p> <p>b) Reasonable overhead is considered an Eligible Cost. Proposition 1E funds Repair and Improvement Projects under separate standards. For that reason, a Local Agency applying for EIP funding must be able to distinguish between repair and improvement work.</p> <p>c) Reasonable overhead is considered an Eligible Cost. The Department agrees that “add” should be changed to “address.”</p> <p>d) The Department will allow credit for the cost of work required to achieve NEPA and/or CEQA compliance, to the extent allowable under Proposition 1E. That said, all environmental compliance work must be directly related to the proposed EIP Project. If the environmental work for which the Local Agency seeks credit has a broader focus than the proposed EIP Project, the environmental costs covered will only be the portion of those costs that directly relates to the EIP Project.</p> <p>e) The Department will provide credit for preliminary investigation costs if the Applicant can make a showing that the costs incurred were necessary and directly related to the proposed Project. Any aspect of the study not directly and necessarily related to the proposed Project will not be funded.</p> <p>f) This suggestion conflicts with Proposition 1E. The Department cannot change the EIP Guidelines in any way that contradicts existing law. The intent of this comment, however, may be realized if the Department agrees that the costs of repairs are not counted against the \$200 million cap.</p>

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		<p>handle cost sharing for an Area with a 100-year and a 200-year project where the State cost share for the two projects would be \$260M and \$140M, respectively. This should be allowed so long as the proposed cost share (\$400M) is less than the \$200M project cap times the number of projects (\$200M x 2 = \$400M). However, under the Guidelines, the State's cost share could be read to be limited to \$340M (\$200M + \$140M). Secondly, the approach contained in this section ignores the authority granted by Prop 1E to spend an amount not limited by the \$200M cap on both Urban and Non-Urban <i>repair</i> projects.</p>	
8	California Central Valley Flood Control Association	<p><u>Specific Comments, Page 17 – 18: Application Process:</u></p> <p>Only providing a two-week period for providing questions to DWR seems very limited in light of the complexity of the process.</p>	<p>The Department has modified the <i>Guidelines</i> to clarify that questions may be asked anytime and will be posted on the website, along with the answers, for public benefit. The Department encourages questions within the first two weeks after it posts the PSP because questions asked during that time can be used to modify the PSP.</p>
9	California Central Valley Flood Control Association	<p><u>Specific Comments, Page 18 - 47: Selection Process:</u></p> <p>This section should be redrafted to address a number of concerns as follows:</p> <ul style="list-style-type: none"> a) Criterion 2 – Area Plan: Modify the last sentence to state that the design criteria are also applicable to <i>non-Urban</i> Area levees. b) Criterion 4 – For Levee In-Place Improvements: DWR proposes that cost-ineffectiveness would be a setback levee that is 5 times more costly than an in-place repair. Suggest incorporating the requirements of the cost-benefit ratios if, for example, a setback costs 3 times as much, but does not meet the cost-benefit ratio the State should cost share the in-place improvement. c) Criterion 5 – Economic Feasibility: For Urban and Non-Urban projects, GRR, LRR or EDR should be 	<ul style="list-style-type: none"> a) The Levee Design Criteria is applicable to urban and urbanizing levees. The Department has incorporated this suggested revision. b) The Department will revise this requirement in the <i>Guidelines</i>. Instead of allowing use of a multiplier to demonstrate infeasibility, the Department will require Applicants proposing a repair or improve-in-place alternative to describe and evaluate a potentially viable Setback Levee alternative and make their case as to why it is infeasible. The Department will then evaluate the information provided to determine whether to participate in either alternative. c) The Department will make the suggested revisions. d) Cost-sharing will be analyzed as it would for be any other Project. e) The Department has modified the <i>Guidelines</i> to add that the Applicant can make the case that a different amount of federal

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		<p>added as component parts of a Feasibility Study. Also, please define the term “FDR”.</p> <p>d) Criterion 6 – Most Cost-Effective Alternative: When DWR retains authority over Project selection, please define how cost sharing will be handled.</p> <p>e) Criterion 7 – Financial Plan:</p> <p>The Guidelines limit the projected federal contribution to the Financial Plan to \$10M per year per Area Plan for 10 years beginning 2 years after the FS. DWR should modify this section to allow Applicants whether a different standard should apply to their projects.</p> <p>It is unclear whether the 10% contingency should be applied to the total cost of the project or the local share of the project. Please clarify.</p> <p>An Applicant must show adequate progress (Gov. Code 65007(a)) and DWR proposes 90% of the funds required for each year be appropriated. DWR should incorporate language for the condition where an Agency has limited appropriations in that year and may never again be able to demonstrate adequate progress.</p> <p>Financial Plan and Statement: We feel it is inappropriate to have a CPA prepare this Plan. Many Agencies may find themselves in the position where financing the local share can only be accomplished after a commitment from the State. This Financial Plan should be prepared by a public finance professional, and then approved by resolution from the governing body contingent upon receipt of grant funding. Financial statements will be reviewed by a CPA, but a CPA-prepared Plan does not strengthen the application or ensure that the local cost share requirement will be achieved.</p>	<p>funding is reasonable to rely on, but Applicant must make a showing that the different number is merited. The 10% contingency is for the whole Project, and it may impact the ultimate local cost-share above the funding cap. Adequate progress is not a requirement for EIP funding. The Department has eliminated the requirement that the Financial Plan be prepared by a CPA or CGFM.</p> <p>f) The first selection criterion is for protection of population, not for value of land. Land value is covered elsewhere. The second criterion rewards Projects working on facilities with relatively low levels of current flood protection.</p> <p>g) List below:</p> <ul style="list-style-type: none"> i. This reflects one of the ways the Department has attempted to address the issue of ability to pay in these <i>Guidelines</i>, recognizing that Non-Urban areas have more difficulty than Urban Areas in raising the local cost-share. ii. The initial cost-share is based on estimated Supplemental Benefits. This will be adjusted based on the final accounting of the actual Supplemental Benefits provided. The <i>Guidelines</i> and Funding Agreement will be modified to clarify this point. iii. The Department must balance timely implementation of Proposition 1E with the obligation to maximize federal and local Project contribution. The State Supplemental Cost-Share Cap assists this balance. It will remain. iv. The Department will allow credit for reasonably incurred in-kind contributions. The <i>Guidelines</i> will be modified to clarify this point.

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		<p>f) Ranking Process:</p> <p>It is unclear what circumstances DWR is attempting to address with the first two criteria of a deep floodplain without 200-year Level of Protection and the second for a deep floodplain with a low Level of Protection. Please explain.</p> <p>For the ranking calculation applicable to “area project benefits” further consideration should be given to the population to be protected and the value of the land.</p> <p>g) Determination of State Cost Share:</p> <p>(i) Basins with Urban and Non-Urban Levees: A repair project in a Non-Urban is cost shared at 85% compared to a 50% cost share for both repair and improvement projects in an Urban Area. Please explain the nuance.</p> <p>(ii) Supplemental Benefits: It is unclear how the supplemental benefits are cost shared and whether it is performed on estimated costs at grant award or audited costs. Please explain. When a local Agency decides to provide supplemental open space, recreation or habitat benefits, they must calculate the total costs and corresponding local share. The cost share is more appropriately based on the estimated amounts, even if actual costs later change the ratio.</p> <p>(iii) Supplemental Cost Share Cap: DWR is suggesting a cost share in excess of 50% for the 1st 70% of the cost of an Area Plan and 50% for the final 30%. This limitation has the potential to significantly limit the kinds of projects DWR seeks, especially those projects with supplemental benefits and projects with setback levees incorporated within. Locals also have to pick up a greater percentage of cost similar to the state, so why limit the higher cost share to the 1st 70%? By initiating projects in advance of the</p>	

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		<p>Corps' ability to implement them, the State can greatly decrease its potential liability from a levee failure.</p> <p>(iv) Credit for In-kind Work or Property: DWR has traditionally allowed local Agencies to provide local cost share by those Agencies providing in-kind work or land right-of-ways. These Guidelines should state that these practices will still be allowed.</p>	
10	California Central Valley Flood Control Association	<p><u>Specific Comments, Page 47 – 48: Finalization of Agreement and Disbursement of Funds:</u></p> <p>The wording “another Local Agency” referring to agreement to Flood Risk Notification should be made clear.</p>	The Department has clarified this section of the <i>Guidelines</i> .
11	California Central Valley Flood Control Association	<p><u>Specific Comments, Page 48 – 49: Independent Review:</u></p> <p>The process for handling comments from independent reviewers is not discussed. Please elaborate.</p>	The Department has augmented this section of the <i>Guidelines</i> .
12	California Central Valley Flood Control Association	<p><u>Specific Comments, Page 49: Guideline Amendments:</u></p> <p>If and when DWR decides to amend the Draft Guidelines, e-mail and written notification should be provided to any party that commented on the Draft version. In addition, DWR should post Guideline Revisions on the FloodSAFE website and send notice through the FloodSAFE listserv.</p>	The Department will post its EIP-related actions on the FloodSAFE website and send notice to the FloodSAFE listserv. This list includes everyone who commented on the <i>Guidelines</i> .
13	California Central Valley Flood Control Association	<p><u>Specific Comments, Appendix A-1: Cost Sharing Examples</u></p> <p>The table in the second example does not appear to be correct. It is unclear how all the Project elements can either stay with the same cost share or have the State cost share increase when</p>	The table is correct. The Department has, however, included additional clarifying language to this example in the <i>Guidelines</i> .

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		the Project is considered as a whole. Please explain.	
14	California Central Valley Flood Control Association	<p><u>Specific Comments, Appendix B: Overview of Project Funding Agreement</u></p> <p>DWR explains that for expenses that predate the signed agreement, the State will only provide credit for expenses incurred by the local Agency where DWR has provided written approval before the expenditure. Many Agencies have been expending funds while waiting for these draft Guidelines, and these expenditures should not be automatically excluded without reviewing them on a case-by-case basis. It is reasonable to require written confirmation for expenses' eligibility for cost-sharing, but there is no reason why written confirmation needs to occur <i>prior</i> to the expenditure. DWR should leave itself the flexibility to make case-by-case a determination especially as these Guidelines are proposes to affect capital outlay projects.</p>	<p>The Department will consider credit for non-construction expenses prior to written approval. Credit will not be considered for any construction without prior written approval. The Department should be aware of and concur on design and construction before the construction takes place and should be able to inspect the construction.</p>
15	California Central Valley Flood Control Association	<p><u>CONCLUSIONS:</u></p> <p>In re-working these Guidelines as consistent with this letter, DWR is urged to consider the benefits to the State of creating strong incentives for local sponsors to quickly partner with the State on multi-objective flood risk reduction projects. The State would benefit greatly from the rapid implementation of multi-objective flood risk reduction projects by reducing its very high financial exposure in the aftermath of the 2003 Paterno decision. Propositions 1E and 84 gave the State and local Agencies a mandate to move swiftly and efficiently to execute flood system improvements. Local Agencies are highly constrained in their capacity to raise their 30% cost share and will find it even more difficult to raise the 50% level given the state of the economy and restraints on local government finances.</p> <p>We request that DWR revise these Guidelines consistent with these comments and make the revised Guidelines available for</p>	<p>Again, Proposition 1E requires the Department to balance the somewhat competing notions of securing maximum federal and local cost-sharing and ensuring timely implementation of needed flood protection work. The cost-sharing formula established by these <i>Guidelines</i> reflects the Department's attempt to achieve that balance. Repair projects in a Non-Urban area qualify for 85% cost-sharing -- far more than they would otherwise receive under "normal" project financing (where the state pays a percentage of the non-federal share, usually amounting to no more than 35% of the Project cost). Repair and Improvement Projects that increase flood prevention in an Urban Area can qualify for 70% cost-sharing (or higher if the project incorporates a Setback Levee). This is at least double of what a Project would have received under the "normal" financing rules described above. This significant increase in State cost-share is intended to ensure that the most necessary Projects can move forward without waiting for federal assistance, but also allows for maximization of Proposition 1E funds by retaining funds for use in multiple Projects and by requiring local cost-sharing and strongly encouraging federal cost-sharing.</p>

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		public review again.	

Agency /Affiliation:	Reclamation District No. 17	1812 Burnside Way, Stockton, CA 95207	By: Letter	Date: 10/17/2008
Sent By: Dante Nomellini, Assistant Secretary and Counsel		E-mail: Not Provided		

Comment Number	Agency / Affiliation	Comment	Response
1	RD 17	<p><u>II Definitions and Acronyms:</u></p> <p>The definition of “Design Level of Performance” references the 1957 design water surface profile plus 3 feet or more freeboard and designed and constructed by the Corps for the Sacramento River Flood Control Project: Where levees have been improved since 1957, the current design LOP may be quite different from the 1957 Corps design LOP.</p> <p>For the Lower San Joaquin River and Tributaries Project, Congress required protection of agriculture, residences and industry against the highest flood of record. It appears the 1957 Corps design LOP is deficient. State assurances, and in turn local District commitments to operate and maintain, were likely based on false expectations.</p> <p>The design LOP definition appears to relate to defining “Repair Project”, although the “Repair Project” definition references “design level of the flood management facility”, which is not defined.</p> <p>The definitions of “Design LOP and Repair Project” should not be tied to the 1957 design water surface profile, but rather to the better of the Congressionally authorized LOP or the water surface profile and design standard used for design and construction of the levees currently in place.</p> <p>For Urban levees which have been accredited by FEMA, the design LOP is much higher or better than the 1957 design. The design LOP for Urban Project Levees should be at a minimum the design LOP used for the FEMA accreditation.</p>	<p>The Department will accept the 1955 or 1957 profile in determining Design Level of Performance. Whichever standard is appropriate will apply. As a rule of thumb, the Design Level of Performance acceptable to the Department is the level which has been adopted by the state and for which the State has offered assurances to the federal government. A Local Agency may, for its own purposes, consider work on past improvements for which the State has not offered assurances to the federal government to be a repair. Such a designation is entirely within the purview of the Local Agency and may be entirely appropriate. That said, for the purposes of complying with the requirements of Proposition 1E regarding repairs to facilities of the State Plan of Flood Control (for which the State has provided assurances to the federal government) the <i>EIP Guidelines</i> will distinguish repairs from improvements based on the level of performance for which the State has provided assurances to the federal government.</p> <p>It is important to note that the repair-improvement distinction does not affect the way a project will rank or how it will be cost-shared.</p> <p>The State Supplemental Cost Share Cap ensures that there is some incentive for the Local Agency to work with the state to secure federal funding. This cap will remain, with one potential exception. If the Department, at its discretion, determines that federal funding is not going to be an option for a Project which it has decided to fund, it may waive the requirement for the Local Agency to seek federal funding and/or credit, and waive the State Supplemental Cost Share Cap.</p>

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		<p>The “Design LOP” should be replace with the following: “Corps Project Design Level of Performance” refers to the higher of the Congressionally authorized LOP or the design water surface profile and levee crown elevation actually applied by the Corps to its original design and construction or subsequent Corps repair or rehabilitation.</p> <p>Design LOP refers to the water surface profile used in the design of the existing facilities and the higher of the existing or design levee crown elevations.</p> <p>The “State Supplemental Cost-Share Cap” definition should be deleted. The capping of the State and local share at 70% assumes that there will be a Federal cost share of at least 30%. It is possible that there will be no Federal cost share or simply a credit that may never materialize. The definition serves no useful purpose.</p>	
2	RD 17	<p><u>III General Requirements</u></p> <p>The artificial ranking of the so-called competitive criteria does not assure distribution of funding in conformance with the electorate nor does it assure flood risks will be addressed in a timely manner. Under these proposed Guidelines it is possible an area of great need involving thousands of people and hundreds of millions of State liability will receive no assistance.</p>	<p>The goal of the Early Implementation Program is to address flood risks in a timely manner by funding Local Agencies that are ready to implement projects, consistent with law and various criteria. Due to the possibility that the Department could receive more eligible Project applications than the Department would be able to fund, the Department established transparent ranking criteria to prioritize the Projects. The ranking criteria are consistent with the provisions of Proposition 1E and consider risk to life, Project benefits, Area Plan benefits and the quality of documentation. <i>A poorly formulated and unjustified Project</i> in an area of great need involving thousands of people and hundreds of millions of State liability would receive no funding assistance. It is unlikely that a <i>ready-to-go, well formulated and justified Project</i> in an Area of great need involving thousands of people and hundreds of millions of State liability would receive no assistance.</p>
3	RD 17	<p><u>IV. C. 3. Non-Eligible Projects and/or Project Components</u></p> <p>Project specific Feasibility Studies, costs of compliance with CEQA and NEPA, hydraulic and geotechnical investigations</p>	See above.

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		related to project design should be eligible project components.	
4	RD 17	<p><u>IV. D. Eligible Costs</u></p> <p>Costs of preparing documents required for CEQA and NEPA should be eligible.</p>	See above.
5	RD 17	<p><u>IV. F. 1. Eligibility c. All Projects</u></p> <p>The seven supplemental eligibility criteria should not be applicable to repair projects. Failure to repair known deficiencies in project levees presents a significant liability exposure to the State and a real issue of public safety. It is clearly in the interest of the State to accelerate not impede such repair. Application of supplemental eligibility criteria simply adds cost and delay to critically needed repairs.</p> <p>Criterion 4 <u>For Levee In-Place improvements Only</u></p> <p>As stated above the Supplemental Criteria should not be applied to repair projects and the criteria forces a waste of public funds. The suggested infeasibility requirement for setback levees of more that 5 times the cost of repair is unjustifiable.</p> <p>Criterion 7 <u>Financial Plan required to Support Area Plan</u></p> <p>The minimum requirements for preparation by a CPA or CGFM should be deleted. It is sufficient to require preparation by a qualified person. This criterion is overly rigid, and the Plan should be judged for reasonableness.</p>	<p>The seven additional eligibility criteria will remain. These criteria, as applied, assist the Department in evaluating which Projects are most cost-effective and feasible and offer long-term benefits to improve the Level of Protection or repair the Design Level of Performance for the Local Agency. It should not be assumed that repairing the levee in place will always be the best long-term solution.</p> <p>See above.</p> <p>The Department will remove the requirement that a CPA or CGFM prepare the financial plan. The <i>Guidelines</i> have been revised to require a person with the “appropriate qualifications” to prepare the financial plan.</p>
6	RD 17	<p><u>IV. F. 3. Determination of State Cost Share</u></p> <p>Repair of deficiencies in Corps project design and construction should be funded at 100% with the expectation that Congress will be requested to provide reimbursement for the appropriate federal share. The cost share cap provision in the four-step process should be eliminated.</p>	Proposition 1E requires the Department to maximize federal <i>and</i> local cost sharing. As a result, it is important that the Department require the Local Agency to bring some funding to the Project.

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7	RD 17	<p>3. c. (ii). <u>Supplemental Benefits That Will Result in Higher State Cost Shares</u></p> <p>There is no justification for the State Supplemental Cost-Share Cap (70% or otherwise), and the cap should be eliminated. Reduction in State liability for damages from project levee failures and public safety should be added as additional “significant contributions”. Flood damages and State liability are likely to greatly exceed the cost of repair especially in areas with significant development.</p>	See above.
8	RD 17	<p>3. c. (v). <u>State Supplemental Cost-Share Cap</u></p> <p>This section should be eliminated in its entirety. The justification for a cap is not set forth and is not supported. If \$100 million of repair costs could avoid an award of \$2 billion against the State, why should the State funding be arbitrarily capped? The cap needlessly eliminates flexibility to better address the State needs and public interest.</p>	See above.

Agency /Affiliation:	The Hartmann Law Firm	3425 Brookside Road, Suite A, Stockton, CA 95219	By: Letter	Date: 10/21/2008
Sent By: George V. Hartmann, Secretary and General Counsel RD 2074		E-mail: Not Provided		

Comment Number	Agency / Affiliation	Comment	Response
1	RD 2030 and RD 2074	<p><u>III. GENERAL REQUIREMENTS</u></p> <p>Reading through the General Requirements section of the Guidelines portrays a near-complete disconnect between reality of the need for immediate “boots on the ground” to protect</p>	<p>The State requires Urban and Urbanizing Areas to reach 200-year Level of Protection by 2025. The purpose of Proposition 1E funding is, in part, to help California reach that goal.</p> <p>That said, the <i>Guidelines</i> allow for repair work and the first Area Project</p>

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		<p>threatened Urban Areas as well as vital agricultural and infrastructure interests in the Sacramento-San Joaquin Delta. Specific objection is made to the scheme of prioritizing projects that is clearly fabricated from whole cloth and is not based on any factual reality. Prioritizing the State's 200-year standard as being equal to meeting FEMA's 100-year standard in terms of allocating funds defies the overwhelming need to insure compliance with the 100-year standard before anything else is done. The highest priority must be accorded to any levee system that does not presently meet the FEMA 100-year standard. Then consideration should be given to a 200-year standard.</p>	<p>to involve non 200-year efforts. Moreover, the ranking criteria give priority to Projects that are improving a low level of protection.</p>
2	RD 2030 and RD 2074	<p><u>IV. C. 3. Non Eligible Projects and/or Project Components</u></p> <p>Project specific Feasibility Studies, costs of compliance with CEA and NEPA and hydraulic and geotechnical investigations related to project design should be eligible project components.</p>	<p>See above, RD 17 comment.</p>
3	RD 2030 and RD 2074	<p><u>IV. D. Eligible Costs</u></p> <p>Costs of preparing documents required for CEQA and NEPA should be eligible.</p>	<p>See above, RD 17 comment.</p>
4	RD 2030 and RD 2074	<p><u>IV. F. 1. Eligibility c. All Projects</u></p> <p>The seven supplemental eligibility criteria should not be applicable to repair projects. Failure to repair known deficiencies in project levees presents a significant liability exposure to the State and a real issue of public safety. It is clearly in the interest of the State to accelerate not impede such repair. Application of supplemental eligibility criteria simply adds cost and delay to critically needed repairs.</p> <p>Criterion 4 <u>For Levee In-Place improvements Only</u></p> <p>As stated above, the Supplemental Criteria should not be applied to repair projects, and the criteria forces a waste of public funds. The suggested infeasibility requirement for</p>	<p>See above, RD 17 comment.</p>

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		<p>setback levees of more than 5 times the cost of repair is unjustifiable.</p> <p>Criterion 7 <u>Financial Plan required to Support Area Plan</u></p> <p>The minimum requirements for preparation by a CPA or CGFM should be deleted. It is sufficient to require preparation by a qualified person. This criterion is overly rigid and the Plan should be judged for reasonableness.</p>	
5	RD 2030 and RD 2074	<p><u>IV. F. 3. Determination of State Cost Share</u></p> <p>Repair of deficiencies in Corps project design and construction should be funded at 100% with the expectation that Congress will be requested to provide reimbursement for the appropriate federal share. The cost share cap provision in the four-step process should be eliminated.</p>	See above, RD 17 comment.
6	RD 2030 and RD 2074	<p>3. c. (ii). <u>Supplemental Benefits That Will Result in Higher State Cost Shares</u></p> <p>There is no justification for the State Supplemental Cost-Share Cap (70% or otherwise), and the cap should be eliminated. Reduction in State liability for damages from project levee failures and public safety should be added as additional “significant contributions”. Flood damages and State liability are likely to greatly exceed the cost of repair especially in areas with significant development.</p>	See above, RD 17 comment.
7	RD 2030 and RD 2074	<p>3. c. (v). <u>State Supplemental Cost-Share Cap</u></p> <p>This section should be eliminated in its entirety. The justification for a cap is not set forth and is not supported. If \$100 million of repair costs could avoid an award of \$2 billion against the State, why should the State funding be arbitrarily capped. The cap needlessly eliminates flexibility to better address the State needs and public interest.</p>	See above, RD 17 comment.

Agency /Affiliation:	Delta Protection Program	Address Not provided	By: E-mail	Date: 10/20/2008
Sent By: Linda Fiack, Executive Director		E-mail: lindadpc@citlink.net		

Comment Number	Agency / Affiliation	Comment	Response
1	Delta Protection Program	<p><u>SB 27 (Sacramento-San Joaquin Delta Emergency Preparedness Act of 2008) relationship to FloodSAFE Early Implementation Program</u></p> <p>SB 27 created a Sacramento-San Joaquin Delta Multi-Hazard Coordination Task Force to be created by OES upon receipt of appropriate funding to include OES, Delta Protection Commission, DWR and one member from each of the 5 Delta counties. The Task Force is required to make recommendations to OES regarding an emergency preparedness and response strategy for the delta region with a report due to the Legislature and the Governor prior to January 1, 2011. The SB 27 required report should be related to an "Area Plan" for flood infrastructure improvements in the Delta and vice versa. Also, the Central Valley Flood Protection Plan should be adopted by 2012 by the Flood Protection Board and should use the SB 27 required strategy report.</p> <p><u>We would like clarification from DWR that the EIP would reimburse the cost to prepare the SB 27 required strategy report so that it can serve as the policy basis for an Area Plan for the Delta. The apparent time difference between the SB 27 and the EIP requirements would hopefully be viewed as minor, as the benefits of joint emergency planning throughout the process of SB 27 implementation would continually assist levee project design modifications, construction and maintenance in the support of the EIP goals. Under this scenario, the five delta counties working in cooperation with the delta reclamation districts (local Agencies) would likely be the Applicants for the EIP funding.</u></p>	<p>These EIP <i>Guidelines</i> govern Project applications submitted this year (2008-2009). The SB 27 report will not be ready and is thus not likely to apply. The Department will, however, consider factoring the SB 27 report into the Area Plan requirement when the report is completed.</p> <p>Proposition 1E allows for evaluation, design, repair and improvement work. This does not include funds for preliminary strategic assessment reports. As a result, EIP money will not be available for SB 27 efforts. That said, once SB 27 identifies Projects to be completed, those Projects may ultimately be eligible for Proposition 1E funds.</p>

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2	Delta Protection Program	<p><u>Recreation Objective</u></p> <p>The Guidelines include a “Recreation Objective” entitling the Local Agency to an increased cost share by providing recreational improvements such as picnic areas, foot and bike paths and providing public access ways into the Project(s).</p> <p><u>We would like clarification that if the Area Plan(s) submitted by the Delta local agencies include a commitment to provide for a segment of the Great CA Delta Trail (SB 1556), that the EIP would include an increased State cost share for planning and/or predesign as well as construction. We would also like to see language in the Final EIP Guidelines, “Recreation Objectives” that includes reference to the Great CA Delta Trail as an example of a “foot and bike path”.</u></p>	<p>Again studies, planning and pre-design activities other than construction design work are not eligible for EIP funding.</p> <p>If work on the Great CA Delta Trail qualifies as a Supplemental Benefit, (likely under the “recreation” category) then such work will qualify the Applicant’s Project proposal for increased cost-sharing (of the design and construction work necessary for flood protection).</p>

Agency /Affiliation:	NOAA National Marine Fisheries Service (NMFS)	Address Not provided	By: E-mail	Date: 10/22/2008
Sent By: Howard Brown		E-mail: Howard.Brown@NOAA.GOV		

Comment Number	Agency / Affiliation	Comment	Response
1	NMFS	<p><u>General Comments:</u></p> <p>1) NMFS recommends that DWR give priority to consideration of building setback levees and other flood management projects that provide increased regional flood control benefits and restore natural flood plains and rearing habitats for native fish species that are within the flood control system. For repairs that may impact fishery resources, NMFS provides Draft Central Valley Levee Repair Guidelines that integrate fish habitat and ecosystem protection and restoration principles into site repairs.</p>	<p>Setback levees are a key element of the EIP <i>Guidelines</i>. The cost sharing section of the <i>Guidelines</i> is structured to provide a 95% State cost-share of the incremental costs of building a Setback Levee. Criterion 4 requires Applicants to demonstrate that it is infeasible to move the levee, and/or there are no significant flood risk management benefits to moving the levee.</p>
2	NMFS	<p>2) NMFS recommends that the Department of Water Resources include an eighth criterion titled “Guide to applicants for complying with National Marine Fishery Service (NMFS), requirements under the NEPA and CEQA constraints.” These notes will be helpful to those proposing projects that must consider listed species and critical habitats under the Endangered Species Act and Clean Water Act.</p>	<p>The Department will add a link to NMFS website as a resource for Applicants (NMFS should provide the link). The Department will not include an additional criterion in EIP <i>Guidelines</i>. To the extent that there are NMFS requirements in NEPA or CEQA as it applies to Applicant’s Project, those requirements must be met so that all the appropriate permits and approvals are in place prior to executing a Funding Agreement.</p>
3	NMFS	<p><u>Specific Comments – Relevant to Levee Repair Guidelines</u></p> <p>NMFS provided about 10 other pages of comments that relate to the DWR Levee Repair Guidelines, which is also out for public review at this time. EIP staff captured the NMFS comments relevant to the Draft EIP Guidelines and summarized them above. The comments related to the Levee Repair Guidelines have been forwarded to the appropriate DWR staff.</p>	<p>Again, EIP Projects must be ready with their environmental compliance prior to any EIP funding. As a result, the EIP program does not require a submittal for environmental compliance, it will merely confirm that compliance has been achieved.</p>