

**CENTRAL VALLEY FLOOD SYSTEM
CONSERVATION STRATEGY
FUNDING GUIDELINES**

**AUTHORIZED UNDER
THE DISASTER PREPAREDNESS AND FLOOD PREVENTION
BOND ACT
(PROPOSITION 1E)**

**STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES
FLOODSAFE ENVIRONMENTAL STEWARDSHIP AND
STATEWIDE RESOURCES OFFICE
(FESSRO)**

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Table of Contents

Section 1 Introduction and Definitions..... 3

Section 2 Application for Funding..... 7

Section 3 Eligibility Criteria..... 8

Section 4 Proposal Completeness Criteria..... 9

Section 5 Project Evaluation and Selection Process..... 11

Section 6 Administration of Funding Allocations..... 13

Section 7 Audits and Record Keeping..... 16

Section 8 Guideline Amendments..... 16

Figure 1: Geographic Scope of the Central Valley Flood Protection Plan 17

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Section 1: Introduction and Definitions

These *Guidelines* address funding allocations to the California Department of Water Resources (Department) in support of the Central Valley Flood Protection Plan (CVFPP), and more specifically, the Central Valley Flood System Conservation Strategy (Conservation Strategy). This funding is being administered by the Department's FloodSAFE Environmental Stewardship and Statewide Resources Office (FESSRO). The funding source is Proposition 1E, the Disaster Preparedness and Flood Prevention Bond Act of 2006 (Section 5096.821(a) of Chapter 1.699 of Division 5 of the Public Resources Code), which provides funds for "the evaluation, repair, rehabilitation, reconstruction, or replacement of levees, weirs, bypasses, and facilities of the State Plan of Flood Control" by repairing erosion sites and removing sediment from channels or bypasses; evaluating and repairing levees and any other facilities of the State Plan of Flood Control; and implementing mitigation measures for projects undertaken pursuant to the subdivision. The Department is also authorized under the subdivision to fund participation in a natural community conservation plan pursuant to Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code to facilitate projects authorized by the subdivision.

Senate Bill 5 (Chapter 364, filed with the Secretary of State on October 10, 2007, codified at Water Code Section 9610 et seq.) is the legislation mandating preparation of the CVFPP. It specifies that the CVFPP shall include descriptions of both structural and nonstructural means for improving the performance and eliminating deficiencies of levees, weirs, bypasses, and facilities (including those of the State Plan of Flood Control). It also states that these activities should strive to meet multiple objectives, including (but not limited to):

- Promote natural dynamic hydrologic and geomorphic processes;
- Increase and improve the quantity, diversity, and connectivity of riparian, wetland, flood plain, and shaded riverine aquatic habitats, including the agricultural and ecological values of these lands;
- Minimize flood management system operation and maintenance requirements; and
- Promote the recovery and stability of native species populations and overall biotic community diversity.

FESSRO is tasked with preparation of the Conservation Strategy for the CVFPP. The SB 5 objectives stated above for the CVFPP are in direct alignment with the intent of the Conservation Strategy as well as with Sustainability and Environmental Stewardship policies recently adopted by the Department. These new policies are designed to help the Department become a sustainability leader and ecosystem steward within State government and the California water community by promoting and facilitating sustainability practices in its operations, and by making concerted efforts to achieve greater ecological benefits from the various projects it implements. The objectives are also consistent with the purpose of natural community conservation plans to sustain and restore species and their habitat, in order to maintain the continued viability of biological communities, when addressing project impacts.

In addition, AB 5 and AB 156 (Chapters 366 and 368, respectively, filed with the Secretary of State on October 10, 2007, codified at Water Code Section 8590 et seq.) specify powers, duties, and jurisdiction of the Department and the Central Valley Flood Protection Board (Board) in carrying out SB 5. In particular, Water Code Section 8613 states that the

Department “may establish a system of mitigation banking by which mitigation credits may be acquired in advance for flood control work to be performed by the Board, the Department, or a local agency authorized to operate and maintain SPFC facilities.”

Intended Use of Available Funding

At this time, FESSRO has chosen to allocate its funding to direct expenditures only. Therefore, the Department reserves the right to develop and support projects through a collaborative process between the Department and eligible Applicants as direct expenditure projects. Direct expenditure projects can be proposed by the Department either in response to a request from a stakeholder or another government entity, or on its own initiative. The Department will apply these *Guidelines*, as it deems applicable and appropriate, to such projects. These projects must provide a benefit to the State, particularly through nexus with current and future construction, operation, and maintenance activities of State Plan of Flood Control (SPFC) facilities, and may be proposed and approved at any time. The Department may transfer funds to other State agencies to implement qualifying projects pursuant to an interagency agreement, or may contract with private mitigation bankers, local government agencies, nonprofit organizations, and federal agencies in funding and implementing these projects.

In accordance with the most recent authorization for funding, FESSRO's intent for this funding is twofold:

- 1) To fund activities that incorporate environmental stewardship and sustainability principles into flood management activities. This includes, but is not limited to, ecosystem conservation actions to improve land and vegetation management approaches for long-term maintenance of the SPFC, and design and implementation of specific restoration plans that meet multi-species habitat conservation goals. Typical projects would include funding activities that restore natural fluvial and related biological processes and vegetation communities in floodplains by acquiring, through fee or easement title, rights to real property that is subject to periodic flooding, or by providing funding assistance to entities implementing such activities.
- 2) To fund advance mitigation solutions for activities undertaken for SPFC facilities. Typical projects that will provide mitigation credits would include funding protection (fee title acquisition), restoration, and enhancement of habitat types that are typically impacted by flood management activities, and/or conservation activities that benefit species that are typically impacted by flood management activities.

Funding can be applied to projects that fall within the geographic area protected by SPFC facilities (Figure 1), but may also be used for projects in areas outside of the SPFC as long as there is an SPFC benefit (for example, projects that establish mitigation credits for current and future activities related to SPFC construction, operation, or maintenance, or projects that assist in reducing regulatory requirements of such activities). For such projects, a Memorandum of Understanding (MOU) or Memorandum of Agreement (MOA) with the appropriate permitting and resource agencies may need to be included in the first phase of funding.

The Department will be guided by the authority of Proposition 1E, California Water Code Section 9600 *et. seq.*, and other applicable California law in determining how it will direct its expenditures.

Notice of Request for Proposals

The Department anticipates that it will issue multiple Requests for Proposals (RFP) in accordance with these *Guidelines*. The Department may request proposals as long as uncommitted funds remain available to fund new projects. Notices of the RFPs will be provided to individuals and organizations that have requested notice of the opportunity to submit proposals, will be posted on the Department website, and will be advertised on the Department of General Service's BidSync website, as applicable. RFPs will describe all application requirements in accordance with these *Guidelines* and will establish the amount of funding available, the application and selection timeline, and the specific criteria that will be used to evaluate and score each project.

These *Guidelines* will be open for public review and comment. The public comment period for these *Guidelines* will be at least 45 days, which will include the *Guidelines* availability from the Department website for 30 days prior to holding two public workshops. The public review process associated with RFPs will be outlined in each RFP, and will likely consist of a 30-day period of availability of the RFP from the Department website and a two-week public comment period following the posting of initial funding recommendations. With the exception of interagency agreements, all agreements funded in response to an RFP will meet the competitive bidding requirements outlined in Chapter 5 of the State Contracting Manual, and will be subject to approval by the Department of General Services.

Definitions and Acronyms

In interpreting and applying these *Guidelines*, the following definitions and acronyms will apply:

“Agreement” or “Funding Agreement:” An Agreement entered into by a successful Applicant and the State to provide funds for the Project.

“Applicant:” A government entity, private mitigation banker, or nonprofit organization, or an organization consisting of more than one applicant, that is the principal party applying for funding.

“Central Valley Flood Protection Plan (CVFPP):” The plan to be developed by the Department in accordance with Cal. Water Code § 9612.

“Board” or “CVFPB:” The Central Valley Flood Protection Board (formerly the Reclamation Board) or its successor.

“CEQA:” The California Environmental Quality Act, Public Resources Code Sections 21000 *et seq.*

“Department” or “DWR:” The California Department of Water Resources.

“Director:” The Director of the Department of Water Resources.

“Eligible Project Costs” or “Eligible Costs:” The reasonable and necessary actual costs associated with implementing a project selected pursuant to these *Guidelines* and further described herein.

“Environmental Stewardship:” A concept and commitment of responsibility to manage and protect natural resources in a sustainable manner that ensures they are available for future generations. **In accordance with the Department’s Environmental Stewardship policy, ecosystem restoration should be incorporated as an objective in flood management projects, including partnering with restoration efforts of others, to achieve net environmental benefit.**

“Facilities of the State Plan of Flood Control:” The levees, weirs, channels and other features of the Federal and State authorized flood control facilities located in the Sacramento and San Joaquin River drainage basin for which the Board or the Department has given the assurances of non-federal cooperation to the United States required for the project, and those facilities identified in Section 8361 of the Water Code. See Cal. Pub. Resources Code § 5096.805(e).

“Funding Recipient:” An eligible government entity, private mitigation banker, or nonprofit organization or combination thereof, duly organized, acting pursuant to the laws of the State of California, which is the signatory to a funding agreement executed pursuant to these *Guidelines*, and its successors and assigns.

“Nonprofit organization:” An entity organized pursuant to Internal Revenue Code Section 401(c)(3) that does not operate for profit and has no official governmental status, including but not limited to clubs, societies, neighborhood organizations, advisory councils, conservation organizations and privately run local community conservation corps.

“Private Mitigation Banker:” A corporation, limited liability corporation (LLC), or other business entity that pursues the creation of mitigation credits as a primary business activity or that has successfully created mitigation credits within California. These entities may also provide ancillary planning or support services related to mitigation banking.

“Project:” All planning, engineering, acquisition of real property interests, construction and related activities undertaken to implement a discrete action to be funded under these *Guidelines*.

“Property interest:” Any right in real property, including easement, fee title, and any other kind of property right acquired by legally binding means.

“Quarterly Progress Report:” A report on the status of the Project offered on a quarterly basis.

“Scope of Work:” Detailed plans and information submitted by the applicant before a funding agreement is signed describing how the Project will be implemented.

“State:” The State of California, acting by and through the Department of Water Resources.

“State Plan of Flood Control (SPFC):” The State and Federal flood management 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 management 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 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 by the Department and compiled into a single document entitled “The State Plan of Flood Control.” See Cal. Pub. Resources Code § 5096.805(j).

“Statement of Costs:” A statement of incurred Eligible Project Costs.

“Sustainability:” A pattern of resource use that aims to meet human needs while preserving the environment so that those needs can be met in the present as well as for future generations. **In accordance with the Department’s Sustainability policy, the Department will consider sustainability and ecosystem stewardship in its activities and plans and, in the context of technical feasibility and cost-effectiveness, will make sustainability a criterion in all decision-making processes.**

Section 2: Application for Funding

The Department may transfer funds to other State agencies to implement qualifying projects pursuant to an interagency agreement, or may contract with private mitigation bankers, local government agencies, nonprofit organizations, and federal agencies in funding and implementing projects. **These Guidelines will not be used to authorize the purchase of mitigation credits within existing mitigation banks, or to establish new mitigation banks, within the Legal Delta (defined in Water Code Section 12220 et seq.).**

Applicants for funding will file a project proposal with the Department in response to the Department’s issuance of an RFP. The Department will not revise the RFP requirements during any period in which project proposals are being solicited.

State Contracting Requirements

In accordance with the State Contracting Manual, the Department may fund projects utilizing one of two contracting methods:

- Interagency Agreements – These are agreements between two or more State agencies (including California State University or University of California campuses). Interagency Agreements are exempt from advertising on the BidSync website and from competitive bidding requirements established by the Department of General Services. Note that

agreements with other governmental entities and public universities (including but not limited to local government entities, Joint Power Authorities, and federal agencies), while not considered “Interagency Agreements”, are also exempt from competitive bidding requirements.

- Requests for Proposals (RFP) – RFPs are circulated in pursuit of agreements with private or nonprofit entities. The agreements culminating from issuance of an RFP must meet competitive bid requirements established by the Department of General Services, including but not limited to advertising on the BidSync website.

Section 3: Eligibility Criteria

Any proposed project should meet the following criteria:

1. It should provide ecological improvements, including but not limited to:
 - Substantial habitat improvements in terms of increased area and/or inundation of floodplain, or increased area of riparian, wetland, or floodplain habitats supporting sensitive species;
 - A strategic location that substantially improves regional connectivity and/or provides essential habitats in accordance with larger conservation plans; and
 - Other environmental benefits, such as improvements to regional water quality or groundwater recharge, wildlife-compatible agriculture, or carbon sequestration.
2. It should have a high likelihood (technical and political) of achieving intended results; examples of how this could be demonstrated include, but are not limited to:
 - It is well-planned, and includes measurable objectives, and long-term management and monitoring;
 - It involves well-qualified individuals and multidisciplinary teams;
 - It is recognized in other large-area conservation plans as an important or priority area;
 - It is broadly supported by interest groups and nearby landowners; and
 - The project site has few or no constraints that might delay project implementation.
3. It should be of reasonable cost, with sufficient budget detail aligned with individual tasks consistent with the authorized uses of bond funds, including but not limited to:
 - The evaluation, repair, rehabilitation, reconstruction, or replacement of levees, weirs, bypasses, and facilities of the SPFC, including associated advance or project-specific mitigation; or
 - Incorporation of environmental stewardship and sustainability into flood management activities, through funding of activities that restore natural ecological processes and/or habitats, to provide an overall benefit to the State through nexus with the SPFC.
4. It shall demonstrate that the project does not negatively affect flood conveyance.

5. It shall detail how the ecological improvements will accrue to ecological mitigation obligations (current or future) of the SPFC.

Section 4: Proposal Completeness Criteria

The proposal will be considered complete and will be evaluated for funding if it includes all of the following:

1. A fully completed project information sheet.
2. A resolution from an appropriate applicant organization authorizing specific individuals to sign the funding agreement on its behalf. (If the applicant represents a consortium of entities, such as a joint venture, resolutions must be submitted by all of the participating organizations authorizing specific individuals to sign the funding agreement on their behalf.)
3. Identification of the specific project location including geographic boundaries, site map, and vicinity map.
4. Drawings or sketches of project features in adequate descriptive detail.
5. A proposed scope of work identifying individual tasks, a schedule for execution of the project, and an explanation as to how the methods used are technically feasible to achieve project goals.
6. A financial summary including:
 - a) The amount of the funds requested. The following is a partial list of eligible costs which may be included in the project's budget, in accordance with specific directions in the RFP:
 1. California Environmental Quality Act (CEQA) and other regulatory permit documentation and any related fees
 2. Planning fees related to the establishment of the area as a source of mitigation credit for construction or modification projects undertaken at SPFC facilities or for the evaluation and repair of those facilities
 3. Phase I Environmental Site Assessment
 4. Real estate fees
 5. Hydrologic and hydraulic analysis or similar modeling for flood impacts
 6. Mitigation for environmental impacts resulting from implementation of the project that is the subject of the application for funds
 7. Right-of-way acquisition and negotiated settlements with existing right-of-way owners
 8. Land acquisition
 9. Construction
 10. Tools, supplies, and OSHA required worker accommodations needed for the project with a useful life approximately equal to the time needed to implement the project
 11. Project management and administration costs
 - b) The estimated budget for the project broken down by individual tasks which match the scope of work;

- c) Identification of ongoing funding sources to pay for long term project maintenance costs;
- d) The estimated amount of project costs to be funded by the applicant; and
- e) Identification of any other parties contributing to the project cost and the amounts and activities to be funded by them.

7. The applicant must demonstrate compliance with all applicable requirements of CEQA and other applicable regulatory laws, and may be required to submit copies of: any environmental documents (including, but not limited to, any CEQA/NEPA drafts or final initial study checklists, any environmental impact report(s), environmental impact statement(s), environmental assessment(s), negative declaration(s), and CEQA findings); Project approvals and permits and mitigation and monitoring plan(s), as appropriate; and all other State and federal environmental requirements (including but not limited to, requirements under the federal Clean Water Act, the federal Endangered Species Act and the California Fish and Game Code); and appropriate environmental permits, authorizations and agreements. If a CEQA document has been completed, the applicant shall provide a written statement certifying that no legal challenges have been made within the specified statute of limitations for the Notice of Determination or Notice of Exemption. Once CEQA documentation has been completed, the Department will consider the environmental documents and decide whether to continue to fund the project or to require changes, alterations, or other mitigation.

8. A statement of how any property improvements or acquired property interests funded pursuant to these *Guidelines* will be conserved in perpetuity, either by a recorded conservation easement, deed restriction or similar limitation to fee title held and enforced by an identified third party, or other mechanism acceptable to the Department. Regardless of which method is used, it must be in first position ahead of any recorded mortgage or lien on the property unless this requirement is waived in writing by the Department.

9. Evidence that affected landowners are willing participants in any proposed real property transactions including willing seller letters for the targeted properties.

10. A list of required permits and an implementation plan for their procurement.

11. A statement of qualifications for each member of the project team (not to exceed two pages per person).

12. A preliminary maintenance plan for properties to be acquired or improvements to be funded and verification that the applicant or the applicant's agent or successor will maintain the project. Elements of a maintenance plan include:

- The name of the maintaining agency, which does not need to be the same as the applicant but must be bound by the same maintenance obligations as the applicant that are required by the funding agreement;
- A description of periodic maintenance activities that will be performed, description and amount of ongoing costs, and the frequency and timing of performance; and
- A statement about the source of funds for the project maintenance and any limitations inherent with that source such as expiration time(s) and spending caps or limits.

13. For a project that will provide mitigation credits, the proposal will need to include a statement of how the site will proceed through the process of qualifying for mitigation credits, the type of mitigation credits that will be pursued, which regulatory agencies will be involved, and the amount that will be available to the Department for use during the evaluation, repair, modification, or construction of SPFC facilities. If there is another entity that will also be creating credits in the same location, or during a separate time period, then a statement should be made about how the costs and credits will be divided.

14. For a project that will provide mitigation credits, the proposal will need to include the anticipated total dollar cost of flood damage repair/restoration if a flood were to occur at the project location, if it is anticipated that the regulatory agencies will require the project proponent to re-establish the site to original condition in order to preserve any mitigation credits.

- Give dollar amount of anticipated damages (repair cost) for both pre-project and post-project conditions in a format that allows the two to be easily compared.
- Use a flood recurrence interval (example 100-year, 50-year) appropriate to the location, nature, and size of the project, and use the same interval for both pre-project and post-project cost estimates. The flood recurrence interval used in estimating flood damage costs must be stated.
- This provision does not preclude applicants from allowing repair or restoration of the project to occur through restoration of natural ecological processes, if regulatory agencies are in agreement.

Section 5: Project Evaluation and Selection Process

The approximate schedule for review and approval of proposals will be identified in the RFP. Project proposals that do not meet the deadline established in the RFP will not be eligible for funding and will not be reviewed.

1. Department personnel will review the proposal for completeness and for project eligibility. The Department reserves the right to waive minor issues related to completeness of the application.
2. A Project Evaluation Team comprised of FESSRO personnel will be convened to review and evaluate the subject project.
3. Department personnel may request that the applicant provide clarification of existing information to better evaluate the merits of the project. If the requested clarification cannot be provided in sufficient time for consideration during the current solicitation of proposals, then the applicant may re-file its application at the next solicitation.
4. Although specific scoring information will be included within subsequent RFPs issued in accordance with these *Guidelines*, in general, projects meeting the eligibility criteria in Section 3 will be scored based primarily on project benefits in the following evaluation categories:

- Ecological Benefits;
- Technical/Political Feasibility; and
- Budget/Cost Sharing.

The Project Evaluation Team will complete the evaluation of the project including recommending its place on a priority list. Projects receiving less than 50 percent of the available points in any of the evaluation categories of the application will not be funded. Projects not funded may be resubmitted at the next RFP with appropriate revisions if needed. If the requested funds for all projects on the priority list are more than available funds, the Project Evaluation Team may determine which projects could be implemented with reduced funding or could have later phases deferred based on information provided in the proposal or during the project site visit.

5. If all or a portion of enhancement associated with the project is proposed to be used for wildlife habitat mitigation, wetland mitigation credit, or species mitigation, then it must be clearly stated how those credits will be available to the Department when it takes action(s) on SPFC facilities. If any portion of the site will be mitigation for other entities, a statement must be included from those other entities, or their legal representatives, that they support joining the Department to work on the creation of a mitigation site in a joint manner should the funding be approved. Formal project-specific agreements establishing the division of costs, and allocation of benefits in accordance with those contributions, would be negotiated after a proposal has been accepted and could be included as part of any funding agreement.

6. After evaluations and recommended priorities by the Project Evaluation Team together with any possible project cost reductions or project deferments, FESSRO personnel will submit the recommendations to the Management Review Team for review. The Management Review Team may consist of managers from FESSRO and the Department's Division of Flood Management and regional offices. The Management Review Team may recommend:

- Allocating any or all of the available funds for projects on the priority ranking list until the highest ranking priority projects are funded; or
- Allocating the remaining available funds to projects lower on the priority list provided all high priority projects are fully funded; or
- Holding over the remaining available funds for allocation in the subsequent funding cycle; or
- Allocating partial funding to one or more of the projects on the priority list currently being funded.

7. The Management Review Team will generally apply a maximum per-project funding limit in its recommendations to the Director, as specified in the RFP, but may recommend funding above this limit.

8. The Management Review Team recommendations and any comments received together with FESSRO personnel's recommendations for disposition of the comments will be forwarded to the Director for final action. The Director may increase the amounts for individual projects if necessary to achieve the goals of the Program. The Director will determine the final content and priority order of the list and the amount of funding for each

project. Funded and non-funded project applicants will be notified at the time of the Director's decision and not before.

9. FESSRO personnel will begin the process of developing a funding agreement with the funding recipient and any related parties. The funding recipient and the Department must enter into a funding agreement, and the funding agreement must be approved by the Department, and if necessary, DGS, before any funds will be disbursed.

Section 6: Administration of Funding Allocations

This Section describes the process entered into by the funding recipient and the Department once a project has been selected for funding. This includes the development and signing of a funding agreement.

1. Before the Department enters into a funding agreement, the funding recipient will submit a work plan (based on the information provided for project evaluation) including a detailed scope of work, budget, and project schedule satisfactory to the Department. To assist the funding recipient in developing the work plan, the Department may visit the project site to assess its conditions and needs and may confer with the funding recipient, project supporters, and other local officials, agencies, and organizations with an interest in the project. The Department may convey recommendations and information obtained from these efforts to the funding recipient. The funding agreement may be initiated once the Department approves the work plan.

2. The funding agreement will be signed by the funding recipient, and, if the funding recipient is a joint venture or similar organization, all the member organizations. If the funding recipient is a nonprofit organization that is not incorporated, it must designate a fiscal agent satisfactory to the Department to act on its behalf, and provide evidence that the fiscal agent agrees to so act.

3. If a Department-approved funding agreement is not signed by the funding recipient within one month of the date the funding agreement is awarded, the funding may be withdrawn.

4. Prior to any modification of the land or vegetation, a hydrologic and hydraulic study, or similar model, acceptable to the Department, may be required for properties within and adjacent to the project. If a project will not likely affect the hydraulic conveyance capacity of surface water conveyance channels nor change transitory storage capacity for storing peak flows, a hydrologic and hydraulic analysis may not be required. If a project is located within the jurisdiction of the CVFPB, a hydrologic and hydraulic study may be required. The jurisdiction of the CVFPB includes the Central Valley, including all tributaries and distributaries of the Sacramento River and the San Joaquin River, and designated floodways. A CVFPB permit is required prior to starting any work within the CVFPB's jurisdiction for the following: the placement construction, reconstruction, removal, or abandonment of any landscaping, culvert, bridge, conduit, fence, projection, fill, embankment, building, structure, encroachment, excavation, the planting, or removal of vegetation, and any repair or maintenance that involves cutting into the levee; and existing

structures that predate permitting or where it is necessary to establish the conditions normally imposed by permitting. The applicant is encouraged to contact the CVFPB for information on project and evaluation requirements.

5. Although funds will be disbursed as provided in the funding agreement to reimburse costs incurred by the funding recipient or to make payments directly into escrow, certain implementation related costs will not be reimbursed or paid until the following conditions are met:

- For project activities that could affect the environment, the funding recipient complies with all applicable requirements of CEQA and other environmental laws; and
- For project activities requiring permits, the necessary permits are obtained.
- For a project that will provide mitigation credits, the preliminary bank enabling agreement(s) have been negotiated between the regulatory agency(s) and the private mitigation banker, and specific mitigation credits which match the Department's needs are likely to result from the Department's further investment in the project.

6. The Department may withhold up to 10 percent of each disbursement, as specified in the funding agreement, to ensure completion of the project. Such withholding will generally not apply to property purchase payments except when multiple cost-shared property purchases occurring at different times are necessary to ensure the success of the project and avoid stranded investment. In such cases, 10 percent of the Department share will be withheld from each purchase, except the final purchase, until the final purchase is completed.

7. The funding recipient will be required to keep informed of and take all measures necessary to ensure compliance with applicable California Labor Code requirements, including, but not limited to, Section 1720 et seq. of the California Labor Code regarding public works, limitations on use of volunteer labor (California Labor Code Section 1720.4), labor compliance programs (California Labor Code Section 1771.5) and payment of prevailing wages for work done and funded pursuant to these Guidelines.

8. The funding agreement will either define project completion milestones, at which time payment will be made for completed work, or state that payment will be made monthly or quarterly in arrears upon receipt of invoices. For property rights acquisitions, payment can be made at the time of purchase directly into escrow or as reimbursement to the funding recipient following escrow closure if the funding recipient advances the funds to complete the purchase in accordance with the terms of the funding agreement.

9. The funding recipient will provide a quarterly progress report to the Department, as a prerequisite to payment of each invoice. Progress reports will include the following:

- Records of expenditures;
- Description of project activities since the previous report;
- Status of the project relative to the progress schedule;
- Key issues that must be resolved; and
- Results of project monitoring.

The first progress report shall be made at the end of the first complete calendar quarter after the date of execution. Progress reports will be submitted quarterly thereafter. The

Department will monitor progress and may suspend all payments indefinitely if in the opinion of the Chief of FESSRO it appears the funding recipient is in breach of the funding agreement to such an extent that ultimate achievement of project objectives may be significantly compromised. If payments are suspended, the funding recipient will be given one month to cure the breach or the funding agreement may be terminated. Decisions to suspend payments may be appealed to the Director of the Department.

10. The Department may inspect the project at any reasonable time during planning and construction to ensure it is being carried out in accordance with the work plan, and after completion to ensure that it is being properly maintained.

11. The funding recipient will prepare a maintenance plan and will be required to report annually to the Department on maintenance activities for five years following project completion.

12. Amendments to funding agreements require the approval of all parties and may require re-evaluation of the project's competitive score. (Note that State Contracting Manual prohibits a change to the scope of work in a competitively bid contract; any changes in scope of work would need to go to bid in a new RFP.) Amendments may address:

- a) Change in schedule (e.g. time extension);
- b) Change in project boundaries or properties targeted for acquisition if outside the project boundaries. A change in targeted properties may be acceptable if:
 - the amount of transitory storage for a given level of flood event does not change so long as the new property is within 5 miles of the previously targeted property or the flood stage elevation reduction for the benefited properties does not change;
 - the proposed new site drains into the same primary watercourse as the original property; and
 - the proposed new site has comparable wildlife habitat quality benefits, i.e. the habitats are similar in size, type, density, quality, and support as many or more target species.
 - For a project providing mitigation credit, the proposed new site can reasonably create the same types of mitigation credits as the original property and in approximately the same ratios without a substantial change in budget.
- c) Change in total budget or transfer of funds between tasks that exceeds 20 percent of the Department approved budget for either task (less than 20 percent does not require a formal amendment but does require the Department's program manager's written approval);
- d) Change to any of the funding agreement provisions; and
- e) Change in parties to the funding agreement.

Proposed amendments that may cause significant change or reduction of project benefits, as determined by FESSRO personnel, may be required to go to bid in a

new RFP. If the Management Review Team determines the change or reduction of project benefits make the project no longer eligible for funding, the funding will be terminated and redirected to another project or re-budgeted for a future funding cycle.

13. The funding recipient will submit a written project completion report which will include:

- a) All items required in Section 6 item 9 above;
- b) Photographs of the before-project condition;
- c) Photographs of planning and restoration activities and techniques; and
- d) Photographs of the completed condition.

14. All funding recipients are subject to State and federal conflict of interest laws. Failure to comply with these laws, including business and financial disclosure provisions, will result in the proposal being rejected and any subsequent funding agreement being declared void. Other legal action may also be taken. Applicable statutes include, but are not limited to, Government Code Section 1090, and Public Contract Code Sections 10410 and 10411, for State conflict of interest requirements.

15. The funding recipient will defend, indemnify, and hold and save the State, its officers, agents, and employees, free and harmless from any and all claims or damages arising out of or in connection with the planning, design, construction, operation, maintenance, repair, replacement, or rehabilitation of the project facilities and properties, and any activity under the Project, including claims based on inverse condemnation.

Section 7: Audits and Record Keeping

1. All funding recipient records and documents pertaining to the Project will be maintained by the funding recipient until three years after the final payment of funds is made.

2. All funding recipient records and documents pertaining to the Project will be maintained by the Department, and available for inspection and audit by the Department or other State representative during normal business hours, while the project is active and for 35 years after the date of expenditure.

Section 8: Guideline Amendments

These *Guidelines* may be amended at the sole discretion of the Department at any time. Amendments to the *Guidelines* will be publicly posted and made available for comment.

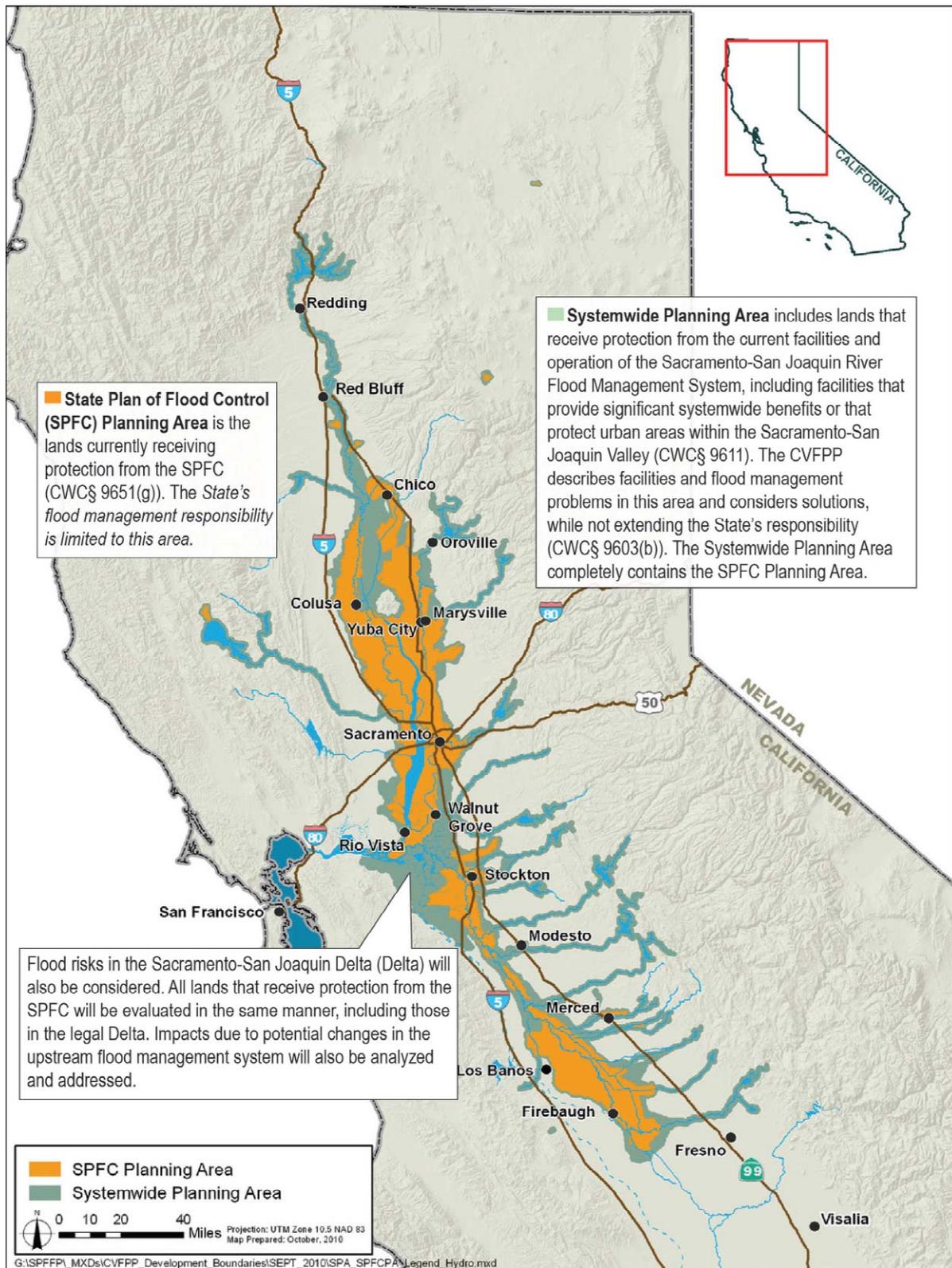


Figure 1. Geographic Scope of the Central Valley Flood Protection Plan

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