IMPLEMENTATION PROCEDURES

Deferred Maintenance Project

Authorized Under the 2016-2017 General Budgetary Allocation

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DEPARTMENT OF WATER RESOURCES
Division of Flood Management
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<tr>
<td>CEQA</td>
<td>California Environmental Quality Act</td>
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<tr>
<td>CFR</td>
<td>Code of Federal Regulations</td>
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<td>CWC</td>
<td>California Water Code</td>
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<td>DWR</td>
<td>Department of Water Resources</td>
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<td>DMP</td>
<td>Deferred Maintenance Project</td>
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<td>LMA</td>
<td>Local Maintaining Agency</td>
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<td>NEPA</td>
<td>National Environmental Policy Act</td>
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<td>O&amp;M</td>
<td>Operations and Maintenance</td>
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<td>SPFC</td>
<td>State Plan of Flood Control</td>
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<tr>
<td>USACE</td>
<td>U.S. Army Corps of Engineers</td>
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<td>USC</td>
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1.0 INTRODUCTION

1.1 Goals and Objectives

The State Legislature has allocated $100 million to the Department of Water Resources (DWR) to address deferred maintenance of flood control facilities. Through the Deferred Maintenance Program (DMP), DWR is making funds available to local maintaining agencies (LMAs) responsible for maintenance of levee penetration and rodent damage repairs on State Plan of Flood Control (SPFC) facilities. The DMP is a 100% State funded program. This document contains policies and procedures applicable to the DMP.

DWR and the US Army Corps of Engineers (USACE) have identified aging drainage pipes and rodent damage as significant threats to levees. The State Systemwide Investment Approach (SSIA) adopted with the 2012 Central Valley Flood Protection Plan (CVFPP 2012) sets the near-term priority for implementing repairs of known and documented critical problems or threats to levee integrity.

CVFPP 2012 requires that funds are expended while:

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

In support of these principles, the objectives of the DMP are to

- repair identified yard facilities,
- repair and rehabilitate the levee pipe crossings in partnership with the LMAs, and
- provide technical and financial assistance to develop capacity of the local maintainers to perform effective rodent damage repairs.

DMP supports the Central Valley Flood System Conservation Framework goals by addressing deferred maintenance issues and sustainable operation and maintenance practices.

1.2 DMP Background

DMP makes funding available to LMAs for projects involving the repair of damaged levee penetrations (e.g. pipes) on SPFC facilities maintained by LMAs or DWR, which may include drainage pipes and culverts, and related flood control structures as further defined in Section 3.2 of this document. An LMA sponsor for a DMP must be a levee district, reclamation district, or other agency with maintenance responsibilities for SPFC facilities and authorized to contract with DWR. A joint powers authority or other entity created and funded to design and implement flood control repairs or improvements may participate as a sponsor; provided the LMA responsible for the territory in which the relevant SPFC facility is located is a member of the joint powers authority and the LMA accepts responsibility for future Operation and Maintenance, Repair, Replacement and Rehabilitation (OMRR&R) of the facility to be repaired.
DWR will work collaboratively with LMAs to identify repairs by:

- Developing a list of past pipe performance problems on SPFC facilities from the available inspection and reporting programs.
- Evaluating and rating the pipes crossing below the levee design freeboard by video inspection or other suitable technology using the US Army Corps of Engineers Guidance for CCTV and Sonar Inspection for Pipes Penetrating Levees (USACE Pipe Inspection Guidance).
- Screening potential pipe repairs against administrative criteria to eliminate ineligible repairs such as repairs that are the responsibility of encroachment permit owners or that may be addressed by other state, local or federal programs.

DWR will prepare a list of pipes to evaluate, based on the goals of DMP to maximize the flood risk reduction and notify LMAs of eligibility for funding for evaluation and potential rehabilitation actions. If an LMA agrees to sponsor the project, DWR will enter into a Project Agreement with the LMA, which will define the roles and responsibilities of the LMA and DWR. Prior to receiving funding for repairs, participating LMAs will be required to enter into an assurance agreement with the Central Valley Flood Protection Board (CVFPB) to provide future OMRR&R on the repaired facility(ies). Subject to an executed Project Agreement and DWR’s approval, the LMA or DWR will prepare environmental documentation; collect engineering data; provide design services; obtain required property rights; and procure, execute, administer, and manage the construction contract with DWR review and oversight. DWR will be responsible for implementing projects at facilities identified in California Water Code (CWC) § 8361 and those maintained by DWR pursuant to CWC § 12878.

1.3 Purpose of the DMP Implementation Procedures

These DMP Implementation Procedures (Implementation Procedures) govern the process by which DWR will review, select, and fund projects under DMP. Projects receiving DMP funding are governed by specific laws, and the Implementation Procedures only apply to the extent that they are consistent with those specific laws. These Implementation Procedures may be amended as described in Section 6.1.

1.4 Funding

Up to $100 million in authorized funds is available to DMP through the fiscal year 2017. DMP repair projects will be 100% State funded. Projects will be DWR directed as defined in these Implementation Procedures. At its discretion, DWR may also opt to select projects by competitive solicitation under a project solicitation package process. Such a process, if implemented, would be described in a subsequent document, or an amendment or supplement to this document. DMP eligibility criteria, requirements, or procedures may be changed, substituted, or terminated, and other criteria may be added at DWR’s discretion. Such changes may be required as a result of State or federal legislative or administrative actions (i.e., actions associated with passage of the annual State budget or other legislation and DWR policy decisions).
1.5 DMP Limitations

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

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

In addition, DMP cannot be accessed to fund routine maintenance activities performed under an LMA’s O&M program. These limitations are described in greater detail in Section 3.3.
2.0 DEFERRED MAINTENANCE PROJECT IMPLEMENTATION PROCESS

This section describes how DWR will implement DMP. Section 2.1 summarizes the process by which potential DMP repairs are identified, classified, and prioritized. Section 2.2 describes the process by which DWR will solicit sponsorship and execute Project Agreements with the sponsoring LMA. Provisions for Project Agreements are provided in Appendix B. Figure 2-1 summarizes the process. The repair of facilities maintained by DWR (identified in CWC § 8361 and pursuant to CWC § 12878 et seq) will be implemented by DWR and will not require Project Agreements.

2.1 DMP Repair Selection Process

2.1.1 Evaluation of Levee Penetrations

Under Phase I of DMP, DWR or LMAs will evaluate the pipe conditions using Video Inspections or other similar technology. DWR has an existing database prepared under its Utility Crossings Inspection Program (UCIP). To maximize flood risk reduction, DMP has screened the pipes that cross the levee below design freeboard henceforth presenting a relatively higher flood hazard than the pipes crossing the levee within the design freeboard.

The evaluation list includes the pipe(s) if:

- *It is necessary for flood control function of the levee.* Most gravity drains shall fall under this category.

- *It crosses below the intended levee design freeboard and there is no identifiable beneficiary of the pipe.* The pipes that are not in use and cross the levee below intended design freeboard without any identifiable beneficiary shall fall in this category.

DWR has conducted field reconnaissance to seek LMA input and to identify constraints (if any) to pipe accessibility for the video inspection necessary to the pipe evaluation process. Using the field reconnaissance information DWR will prepare a list of potentially eligible pipes for each of the leveed areas, which will form the basis for the scope of the DMP Phase-I work plan.
Figure 2-1. DMP Process.
2.1.2 Compilation of Potentially Eligible Repairs

2.1.2.1 Pipe Rehabilitation Plan

DWR will review the available engineering data, video inspection reports from DMP Phase I work, and classify the pipe conditions as critical, serious, or no action needed based on the severity of damage. Each classification will consider the following USACE rating criteria in determining whether the pipe condition represents a critical or serious problem:

- **Critical** - Pipes that have failed or are likely to fail in the next five years.
- **Serious** - Pipes that are in fair-to-poor condition and are likely to fail in the next 5 to 20 years.
- **No action needed** - Pipes that are in excellent-to-good condition with more than 20 years of service life remaining.

For each potentially eligible levee penetration repair, DWR will prepare a summary alternative analysis, which may include:

- Removal, if the pipe is not in use and its condition is rated critical
- Removal and replacement, if the pipe condition is rated critical
- Abandonment-in-place, if the pipe is not in use and its condition is rated other than critical
- Slip-lining in place, if the pipe condition is serious
- A pre-feasibility estimate of costs, opportunities, and constraints

DWR will prepare a Levee Area - Pipe Rehabilitation Plan (PRP) consisting of repair options for potentially eligible pipes within each of the leveed areas (USACE Levee Systems), which will include:

- a preferred rehabilitation plan for each eligible pipe, along with engineer’s pre-design cost estimate;
- a project schedule and budget;
- a summary of anticipated environmental compliance and regulatory permitting requirements and estimated costs; and,
- a summary of potential utility and encroachment impacts for the preferred repair.

The scope of this effort is intended to support a determination of the type of repair needed and the prioritization of repairs. For repairs that proceed to Phase II, the LMA or DWR, per the terms of the Project Agreement, will be responsible for the design and permitting needs as described later in these Implementation Procedures.
2.1.2.2 Rodent Damage Repair Assistance Needs Assessment

LMAs current rodent damage repair practices will be assessed and the need for technical or financial assistance will be determined. DWR will consult with LMAs and share its rodent control and rodent damage repair practices where assistance is warranted. Through DMP, DWR may fund the following types of assistance:

- Purchase of tools and equipment for enhancing rodent damage repair capabilities
- Training for LMA staff

Works ineligible for funding:

- Routine maintenance such as bait stations
- Expendable materials such as grouting materials, or bait station materials

2.1.3 Screening Potentially Eligible DMP Sites Against Administrative Criteria

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

- Sites that are inconsistent with the SSIA approach identified in the CVPPP 21012.
- Sites that are components of a proposed DWR or CVFPB project under other funding.
- Sites that are authorized or scheduled to be addressed under an existing federal program.
- Pipes that are the responsibility of encroachment permit holders or known beneficiaries.
2.1.4 Prioritization of Eligible Repairs

DWR’s prioritization of potentially eligible repairs will be based on:

- Maximizing flood risk reduction.
- Workability and sustainability of repair.

Preference may be given to projects that would repair all eligible penetrations, of similar severity, in a leveed area over a project that would repair only a portion of similarly eligible sites.

Because of potential funding limitations, not all critical repairs may be funded. In addition, because implementation of a DMP repair project is contingent upon; execution of a project agreement with the LMA; an assurance agreement with the CVFPB; availability of funding; obtaining all necessary permits and other constraints; not all eligible sites identified during an the DMP reconnaissance/inspection phase may be implemented. Any potentially eligible pipe repair that does not proceed to the Phase II stage may be retained for consideration during some future levee repair project.

2.2 DMP Project Development Process

2.2.1 DWR Solicitation of LMA Sponsorship

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

- A description of the eligible pipes for evaluation
- A budget estimate for cost of evaluation Phase I work
- A prefeasibility cost estimate for construction, anticipated environmental compliance, and regulatory permitting and the costs
- A draft Project Agreement
- A request for the LMA to enter into a Project Agreement with DWR
- A list of documentation that must accompany the Project Agreement

The requirements of the Project Agreement will include confirmation that the LMA is authorized to contract with the State and intends to implement the project under DWR oversight, and an identification of the persons responsible for managing the project and authorized to sign the Project Agreement.

LMAs that decide to participate in the DMP must return a complete package in hard copy to DWR 60 calendar days from the date of the Notice of Eligibility. To be considered timely, the package must be received by DWR no later than 5:00 pm on the 60th day, or the first business day thereafter if the 60th day is a weekend or federal or State holiday. Project Agreement LMAs are encouraged to submit any questions to DWR that might help clarify Project Agreement requirements within 3 weeks of the date of the Eligibility Notice. Incomplete Project Agreement packages, or packages submitted after the response
deadline, will only be considered at DWR’s discretion after all other properly submitted packages have been considered.

### 2.2.2 LMA Sponsorship

Implementation of a DMP repair project is contingent upon LMA sponsorship. LMA will confirm sponsorship by submitting a Project Agreement and associated documents to DWR. At a minimum, the Project Agreement package must include:

- A reference to the Eligibility Notice, including an overview of the DMP repair project.
- A statement identifying the LMA’s representatives.
- A statement concerning the applicant’s legal authority to enter into a contract with the State of California to implement a flood protection program and levy assessments and charges.
- A Resolution of Authority authorizing filing of the sponsorship and designating a representative to sign the Project Agreement and Assurance Agreement. The Resolution of Authority must be a resolution of the LMA’s governing board authorizing specific individuals to sign a Project Agreement on behalf of the LMA sponsor and authorizing specific individuals to apply for and accept State disbursements.
- Three signed copies of the Project Agreement with Resolution accepting the funds.
- Phase II funding is contingent upon the LMA executing an Assurance Agreement with the CVFPB.

A statement indicating the LMA is willing and able to design and implement the project as agreed upon in the Project Agreement and will comply with CWC § 9140 for reporting requirements. On receipt of an Eligibility Notice, if the LMA declines to sponsor an eligible DMP repair project in its territory, DWR may perform repairs. Additionally, DWR may petition the CVFPB for formation of a maintenance area under CWC § 12878 et seq.

### 2.2.3 Project Agreement

The Project Agreement will identify the roles and responsibilities for DWR and the LMA when implementing the DMP repair project. The Project Agreement shall also include an overall work plan with the project scope, schedule, and budget. Appendix B provides more detail about the conditions and requirements of Project Agreements under the DMP.

All Project Agreements must be signed by the LMA sponsor. If a Project Agreement is not signed and returned within two months of the date the Notice of Eligibility, or if an LMA needs additional time to complete environmental review and permitting, it may submit a written request for additional time with appropriate justification. DWR reserves the right to deny a request for more time and LMAs are strongly encouraged to make timely submissions to ensure consideration and availability of funding.

### 2.2.4 Project Implementation

DMP projects will be implemented in two Phases. Based on the conditions, either DWR or LMA will be the lead in implementing the evaluation and repairs. DWR has prioritized the
levee penetrations that represent a higher flood hazard and are potentially eligible for rehabilitation. This prioritized list of pipes will be the scope for Phase I evaluation work. The lead agency, either LMA or DWR, will complete Phase I work.

DWR will review the results of pipe evaluations to rate the pipe conditions, and will prepare a Pipe Rehabilitation Plan (PRP) for each of the levee areas. The PRP will form the basis for Phase II work.

Funding for Phase II work is contingent upon receipt of an executed Assurance Agreement between the sponsoring LMA and the CVFPB. Upon receipt of the executed Assurance Agreement for the proposed repairs, and consideration of the funding priorities, DWR will authorize the Phase II work. Phase II work will include design, development, environmental, real estate, regulatory clearances, and construction of repairs identified in the PRP.

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

2.2.4.1 LMA Sponsor-Led Project Implementation

The LMA sponsor will evaluate, design and construct the repair project. DWR will monitor LMA activities and confirm compliance with all applicable permits, standards, laws, and other local, state, and federal requirements. Depending on the type and complexity of the project, the extent of oversight will be identified in the Project Agreement.

For approved levee penetration repairs lead by the LMA sponsor, an approval letter must first be issued to the LMA sponsor before construction may begin. Before DWR will issue an approval letter, the LMA sponsor will be required to submit:

- copies of any permits and mitigation monitoring plan(s),
- design plans and specifications, and
- copies of other documents, as appropriate, to demonstrate compliance with all applicable requirements of the California Environmental Quality Act (CEQA), the National Environmental Policy Act (NEPA), and all other applicable state and federal environmental requirements, including requirements of federal Clean Water Act, the federal Endangered Species Act, and the California Fish and Game Code.

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

2.2.4.2 DWR-Led Project Implementation

DWR will design and construct projects at facilities identified in CWC § 8361, and those maintained by DWR pursuant to CWC § 12878 et seq.
3.0 PROJECT AND LMA ELIGIBILITY

3.1 Eligible LMA Sponsor

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

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

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

An LMA sponsor must provide documentation of its authority and capability to implement its participation in a DMP repair project as defined in the Project Agreement. Depending on the level of participation and the size and complexity of the repair, DWR may require a written Financial Plan demonstrating how the LMA will fund its obligation to perform OMRR&R for the project. Detailed requirements for the Financial Plan, if required, are contained in Appendix B.

An LMA sponsor is solely responsible for staying informed and taking all measures necessary to comply with applicable California Labor Code requirements, including:

- § 1720 et seq of the California Labor Code regarding public works.
- Labor compliance programs as defined in California Labor Code § 1771.5.
- Payment of prevailing wages for work done and funded pursuant to these Implementation Procedures, including any payments to DWR of industrial relations as defined in California Labor Code § 1771.3.

3.2 Eligible Repair Projects

An eligible project must be a repair project consisting of work on a levee pipe that has been rated critical or serious, on an existing facility of the SPFC. Eligible projects include repair of
levee penetrations and rodent damage on SPFC facilities. Actions that may be funded include:

- Removal and/or replacement of levee penetrations of pipes rated as critical.
- Abandonment in place for pipes identified as not in use.
- Slip lining of identified levee penetrations rated as serious.
- LMA capacity development for rodent damage repairs.
- Implementation of mitigation measures for the repair project.
- Eligible DMP repair projects may restore the capacity of the levee penetration and must fall outside the definition of routine maintenance.

3.3 Ineligible Repair Projects

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

- Repairs to levee penetrations that are not components of the SPFC.
- Routine maintenance activities that should be performed under an LMA O&M program.
- Repairs to any levee penetration that has an identifiable beneficiary.
3.4 Eligible Costs of Eligible Projects

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

- Costs associated with design
- Environmental documents
- Construction
- Independent reviews

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

No funds will be disbursed until a Project Agreement has been executed. Costs incurred prior to execution of a Project Agreement by the LMA are not reimbursable under the DMP. Reimbursement of costs allocable to Phase II work are contingent upon execution of an Assurance Agreement by the LMA; costs allocable to Phase II work and incurred prior to execution of an Assurance Agreement are not reimbursable under the DMP.

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

- Obtaining necessary environmental permits and associated environmental mitigation directly related to the proposed project, including costs associated with preparing documents required by CEQA and, if applicable, NEPA.
- Legal fees for conducting work eligible for reimbursement after the execution of Project Agreement by the LMA.
- A proportionate share of reasonable overhead costs related to the repair project.
- Performing design activities in accordance with the appropriate environmental documents.
- Collection of engineering data for use in the design or construction.
- Obtaining other necessary federal or State governmental approvals.
- Utility relocations and damage to real property.
- Constructing the project in accordance with the design, including project management and other supplementary costs approved in writing by DWR prior to construction.
- Progress reports and the final project report.
- DWR monitoring of project construction.
- Other costs identified as determined by DWR to be eligible and included in the Project Agreement.

With respect to costs associated with environmental mitigation required by CEQA, NEPA, or applicable permits, only those costs incurred at the time of repair (i.e. cost of the mitigation installation or implementation incurred either concurrently or prior to completion of repair) will be considered eligible project costs. To determine the eligibility of certain types of costs, DWR intends to adhere to the guidance document used by USACE, the Office of Management and Budget Circular A-87 (see 2 CFR Part 225, Exhibit E [indirect costs], or 2 CFR Part 225, Exhibit B, Item 23 [interest costs]) to the extent it is not in conflict with the foregoing. A copy the Office of Management and Budget Circular A-87 can be found at: http://www.whitehouse.gov/sites/default/files/omb/assets/omb/fedreg/2005/083105_a87.pdf.
4.0 GENERAL CONDITIONS

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

4.1 Basis for Initial Funding and Scheduling

Initial funding will be based on the pre-design estimate of costs. Upon review of the Phase I pipe evaluation reports, DWR will prepare pre-design estimates to include in the PRP to scope the Phase II rehabilitation work. Funding may be adjusted immediately prior to the Project Agreement authorizing the Phase II work, immediately after the project construction contract is awarded, or when all costs are known after completion of construction. The adjustments will be based on actual eligible expenditures and updated estimates of completion costs.

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

4.2 Basis for Disbursement of Funds

Disbursement of funds under an executed Project Agreement will be based on conditions identified in Appendix C of these Implementation Procedures and contingent upon satisfaction of all applicable Project Agreement requirements. It is the LMAs responsibility to become familiar with the requirements of the Project Agreement.

4.3 Regulatory Compliance

Projects must comply with all applicable permits, standards, laws, and other local, State, and federal requirements including but not limited to:

- CEQA
- NEPA (if applicable)
- State and federal Endangered Species Acts
- Federal Clean Water Act
- Regulatory requirements of the Federal Energy Regulatory Commission, USACE, the CVFPB, the State Water Resources Control Board, and other agencies

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

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

4.4.1 Design Criteria

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

- Repairs will primarily focus on addressing a critical problem without exacerbating other existing problems at the same site. Design reviews will ensure that the proposed repair does not exacerbate other existing problems.
- Repairs shall meet minimum engineering practices for safety.
- Repairs should be designed to maximize avoidance of environmental impacts and to limit mitigation to impacts that cannot be avoided.

To ensure consistency in DMP designs and to expedite repair implementation, DWR will prepare repair criteria that will further define design criteria for: removal and replacement, slip lining in place, or abandonment in place under the DMP using these principles.
5.0 CHANGES TO OVERALL WORK PLAN AFTER FUNDING AGREEMENT IS SIGNED

After the Project Agreement is executed, DWR will consider approving or requiring changes to the work plan due to circumstances that were not reasonably foreseeable at the time the Project Agreement was executed. In addition, DWR anticipates that most work plans will be amended at least once prior to initiation of Phase II construction works.

DWR will allow non-material changes to be made to the work plan without formally amending the Project Agreement. Non-material changes include:

- Changes to the design plans at the sole discretion of DWR, if it is determined by DWR that said changes will improve the project design and will not result in a budget revision or an increase in the overall schedule beyond the term of the Project Agreement.
- Changes to portions of the work plan concerning budget that would not result in an increase greater than 10% to the State’s funding commitment, as explained below.
- Changes to the work plan’s project schedule that do not extend the term of the Project Agreement.

If DWR determines that changes are needed in the scope of the work plan and those changes require an increase in funding, DWR may authorize an increase in the project budget of up to 10 percent without amending the Project Agreement.

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

All changes, both material and non-material, must be documented in writing and delivered to the DWR program manager.

5.1 LMA Sponsor’s Construction Default

If for any reason an LMA sponsor is unable to completely construct a DMP repair project, it is at the sole discretion of DWR to proceed with any or all of the following:

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

6.1 Amendments to Implementation Procedures

Any or all of the eligibility criteria, requirements, or procedures specified in these Implementation Procedures may be changed, substituted, or terminated, and other criteria added at the discretion of DWR by amending these Implementation Procedures pursuant to the process set forth in this section. Amendments to the Implementation Procedures will be posted on DWR’s website for a minimum of two weeks prior to their effective date.

DWR does not intend to apply amendments to these Implementation Procedures for projects where Project Agreements have been executed; however, in situations where an executed Project Agreement must be amended for other reasons, the changes must be consistent with the version of the Implementation Procedures in effect at the time. An executed Project Agreement can be amended only upon written agreement between DWR and the LMA sponsor.

If after an Eligibility Notice has been issued, changes are made to the eligibility criteria before the Project Agreement has been executed, DWR will notify the LMA sponsor of the changes. If the LMA sponsor has supplied information, DWR will request additional information as needed to determine whether the proposed projects meet all applicable revised or new criteria. Following any response from the LMA, DWR shall have the option to either cancel the Eligibility Notice for the project or offer a revised Eligibility Notice reflecting the changes.
7.0 BIBLIOGRAPHY

All references are to websites.

American Fact Finder (census data) for the year 2010: http://factfinder2.census.gov/faces/nav/jsf/pages/wc_dec.xhtml


U.S. Census Bureau (census subdivisions), for the year 2010: http://www.census.gov/sdc/

A. DEFINITIONS

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

Assurance Agreement

The form of agreement between the Central Valley Flood Protection Board and Funding Recipient for the provision of assurances to the CVPB regarding the assumption of OMRR&R for the Project by Funding Recipient attached hereto as Exhibit D. Execution of the Assurance Agreement is a prerequisite to Phase II funding.

Benefited Area

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

California Median Annual Household Income

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

Critical Damage

Damage to a levee penetration leading to failure of the pipe, or the likelihood of failure, in the next five years.

Critical Path Method

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

Damage

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

Design

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

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

**Disadvantaged Household Income**

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

**Eligibility Notice**

A letter from the Department of Water Resources to a local maintaining agency about a potential Deferred Maintenance Project stating that the subject project may be eligible for 100% State funding and requesting that the local maintaining agency become the local maintaining agency sponsor of the project, enter into a Project Agreement, and perform the construction.

**Eligible Project Costs**

The reasonable and necessary actual costs associated with a Deferred Maintenance Project repair project as further described in these Implementation Procedures. Such costs include only those associated with elements that are necessarily a part of the flood protection effort or that are included to meet the habitat, open space, and recreation objectives.

**Flood Protection Facility**

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

**Full-Share Costs**

Eligible project costs that will be reimbursed by the State at 100% plus any increases approved by the Department of Water Resources under these Implementation Procedures (see Section 3.4).

**Levee**

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

**Leveed Area**

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

**Level of Protection**

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

Local Agency

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

Local Maintaining Agency

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

Maintain

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

Maintenance Area

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

Milestone

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

Open Space

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

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

Pre-Project Costs

Costs related to a Deferred Maintenance Project that may qualify as eligible project costs in all respects except that they were incurred before the execution of a Project Agreement by the Local Maintaining Agency.

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

**Project Agreement**

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

**Pipe Rehabilitation Plan**

Pipe Rehabilitation Plan (PRP), a plan and report consisting of repair options for each potentially eligible pipe within a leveed area (USACE Levee Systems), which will include: the pipes to be repaired and the preferred repair alternative, an engineer’s pre-design cost estimate, a summary of anticipated environmental compliance and regulatory requirements including estimated costs, and a summary of potential utility and encroachment impacts.

**Repair**

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

**Routine Maintenance**

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

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

**Seepage**

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

Damage to a Levee Pipe facility such that the pipe is in poor condition and is likely to fail in the next 5 to 20 years.

Sponsor

A local maintaining agency that has agreed in writing to participate in a Deferred Maintenance Project as described in these Implementation Procedures.

State

Where the context implies a political subdivision, the term is defined as the State of California, or where the context supports, the term is defined as the State of California acting by and through the Department of Water Resources.

State Plan of Flood Control

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

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

Total Project Cost

The portion of the cost of the project that is to be paid entirely by the Department of Water Resources with local maintaining sponsor acting as the project lead agency, or the cost that will be paid entirely by the Department of Water Resources if there is no local maintaining agency sponsor. The costs contributed by other state or federal agencies are not included in the total project cost.
B. PROJECT AGREEMENT PROVISIONS

1.0 INTRODUCTION

This appendix describes the required provisions for Project Agreements between the Department of Water Resources (DWR) and local maintaining agencies (LMAs) for projects administered under the Deferred Maintenance Project (DMP) as defined in these Implementation Procedures.

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

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

• Discussion about the repair project schedule and cost.
• Limits of State funds.
• LMA sponsor responsibility for completing and maintaining the project.
• Method for the LMA sponsor to receive project funds from DWR.
• Method for DWR to receive project funds from the LMA sponsor.
• Discussion of reporting requirements.
• Independent review requirements.

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

• Cancel the Project Agreement.
• Complete the project using its own resources.
• Contract with the current or any other contractor to complete the project.
• Require that the LMA sponsor return all or a portion of State funds, with interest that has accrued from the date the funds were provided at the State Surplus Money Investment Fund rate at the time of default.
2.0 PROVISIONS FOR ALL PROJECT AGREEMENTS

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

- A description of the project.
- A requirement that the LMA sponsor indemnify and hold the State, its agencies, officers, and employees free and harmless from any and all liability arising out of project activities.
- A requirement that the LMA sponsor assures the completed project and any associated environmental mitigation measures will be operated and maintained in accordance with the then-applicable Operations and Maintenance (O&M) Manual, revised or amended by the LMA and approved by DWR as necessary to address the completed project.
- A provision that the LMA sponsor will perform maintenance with its own staff, or will employ another agency or organization satisfactory to DWR.
- A provision that the LMA sponsor will control encroachments on project facilities and properties, whether unauthorized or permitted, and will not allow any new encroachments without Central Valley Flood Protection Board approval.
- A requirement that, if the LMA fails or refuses to perform the obligations set forth in the Project Agreement in the opinion of the State, DWR may, upon 30 days written notice, enter the property, perform the required work, and bill the LMA sponsor, and the LMA sponsor will reimburse DWR for any work so performed.
- A provision stating that, notwithstanding the ability of DWR to enter the property to perform required obligations set forth in the Project Agreement, DWR can seek a court order requiring the LMA sponsor to perform its contractual obligations to do such work and/or pay DWR’s costs for doing such work.
- Any other engineering, technical, financial, economic, environmental, or legal requirements deemed necessary by DWR, including additional requirements with regard to indemnification.
- Citations of the LMA sponsor’s statutory enabling laws, authority to construct the project, and authority to contract with DWR, including a brief description of procedural steps required by the LMA sponsor’s enabling laws to contract with DWR.
- Evidence of compliance with Section 3.0 of Appendix C of these Implementation Procedures regarding acknowledgement of flood risk, application for credit or reimbursement from the U.S. Army Corps of Engineers (USACE), and execution of an agreement providing for the LMA sponsor’s O&M of the project.
- An attachment containing a resolution of the LMA sponsor’s governing body approving the Project Agreement and designating a representative to execute the Project Agreement and to sign requests for disbursement of State funds.
- If required by DWR, an appendix containing the LMA sponsor’s Financial Plan, as described in Section Error! Reference source not found. .
- If required by DWR, an appendix containing the LMA sponsor’s Maintenance Plan, as described in Section 2.1.
2.1 Maintenance Plan

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

- A description of the facilities and properties to be maintained.
- The name of the maintaining agency.
- A provision requiring the LMA sponsor to maintain the completed project in perpetuity or until DWR agrees in writing that the project is no longer needed and maintenance is no longer required.
- A description of periodic maintenance activities that will be performed, and the frequency and timing of performance.
- Disclosure of the source of funds for the maintenance.
- A certification, under penalty of perjury, that the LMA sponsor can pay for maintenance of the project facilities from funds available to the LMA sponsor.
- A provision requiring the LMA sponsor to provide annual pictorial reports to DWR each year between July 1 and July 15 describing the maintenance activities performed during the year and any maintenance problems that exist.
- LMA sponsor’s assurance that the maintenance measures or repairs DWR deems necessary will be promptly performed.
3.0 ADDITIONAL PROVISIONS FOR DMP REPAIR PROJECTS PERFORMED BY THE LMA SPONSOR

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

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

An LMA sponsor must quarterly update the work plan that is satisfactory to DWR that includes:

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

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

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

3.2 Progress Reporting

An LMA sponsor constructing a DMP repair project will be required to submit progress reports during construction in sufficient detail to substantiate reimbursable expenses. Progress reports will be a key item for evaluating requests for reimbursements; reimbursement requests will only be considered for periods of work for which an acceptable progress report was received. Reimbursement requests will be subject to the following requirements:
• The minimum period between reimbursement requests will be one (1) month.
• Progress reports will be required monthly unless otherwise stated in the Project Agreement. The maximum reporting period will be three (3) months (i.e., quarterly).
• For repair projects with Project Agreements that establish milestones, a progress report shall be made when each milestone is completed.
• The time periods covered by successive progress reports shall be continuous and shall not overlap.
• Progress reports shall include the following information:
  – Records of expenditures (cumulative and by reporting period).
  – Description of activities since the previous report.
  – Status of the project relative to the progress schedule.
  – An estimated percentage of completion of the work.
  – The percentages of total funding expended.
  – Description and justification of any use of contingency funds.
  – Key technical, engineering, construction, environmental, legal or other issues that must be resolved and their impact on project schedule and constructability.
  – The time period covered by the report.
  – A proposed new schedule for DWR’s consideration if the current schedule is no longer achievable.

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

3.3 Final Project Report

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

• An executive summary not exceeding two pages.
• Records of expenditures.
• A detailed accounting for contingency fund deposits, expenditures, and balances.
• A comparison of the original schedule and the actual schedule.
• A discussion of problems that occurred during the work and how the problems were resolved.
• Submittal of any required products that have not been submitted previously.
• A listing of required products previously submitted, with dates of submittal and dates of DWR’s approval.
• Any mapping or spatial products produced as part of the project (see Section 3.5).
• Photographs of the project before start of work.
• Photographs of the project during work showing project activities and techniques.
• Photographs of the project upon completion.
• As-built plan drawings.
• A revised Maintenance Plan, approved by DWR, as described in Section 2.2 of these Implementation Procedures.

3.4 Record-Keeping Requirements

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

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

3.5 Project Mapping and Spatial Information

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

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

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

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

Independent or DWR-led reviews will be required for all DMP repair projects regardless of Project Agreement conditions. Reviews shall be defined in the work plan (Section 3.1) unless otherwise directed by DWR.

4.1 LMA Sponsor-Led Projects

For LMA sponsor-led projects, DWR will require, at its sole discretion, a DWR-led or an independent review of all work products beginning with data acquisition and continuing through project completion. The extent of the review will be determined based on the project size and complexity, and will be negotiated with the LMA during development of the Project Agreement. DWR is more likely to require an independent review when one or more of the following factors apply:

- Failure of the project would pose a significant threat to human life or critical infrastructure.
- The project involves the use of non-standard materials, techniques or designs.
- The project has unique construction sequencing (such as design/build) or an accelerated schedule.
- The project is being approved by USACE under U.S. Code Title 33 (33 USC) § 408.

In performing the independent review, DWR will apply, at its discretion, one of the two following approaches listed below in the order of DWR preference:

- Approach 1: DWR selects a panel of independent reviewers and administers an independent review.
  DWR issues the charge to the panel of independent reviewers and, in consultation with the LMA sponsor, ensures that the charge is fulfilled. Under this approach, the independent review costs will be part of the eligible project costs. Throughout the process, DWR must consult with the LMA sponsor. At the discretion of DWR, the LMA sponsor may propose more detailed instructions to be included in the charge to the panel to ensure that project-specific technical issues are addressed.

- Approach 2: At its sole discretion, DWR may allow the LMA sponsor to select the panel of independent reviewers.
  DWR must review and approve the reviewers selected by the LMA sponsor as being appropriate for the project. DWR issues the charge to the panel of independent reviewers, and the LMA sponsor, in consultation with DWR, ensures that the charge is fulfilled. Costs associated with this approach are eligible project costs and are to be cost-shared in the same manner as all other eligible project costs. Throughout the process, the LMA sponsor must consult in good faith with DWR.

The independent review panel must be composed of at least two and no more than five individuals. More reviewers (up to five) may be required for larger and/or more complex projects at the discretion of DWR. Reviewers must be individuals who are distinguished experts in engineering, hydrology, or other appropriate discipline. Individual independent reviewers may be associated with firms, but all independent review work must be performed...
by the individual reviewer. Reviewers must be free from any real or apparent conflict of interest.

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

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

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

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

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

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

4.2 DWR-Led Projects

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

1.0 INTRODUCTION

This appendix describes required provisions for obtaining credit and disbursement of funds under the Deferred Maintenance Project (DMP) as defined in these Implementation Procedures.

2.0 REQUIREMENTS FOR OBTAINING CREDIT

Under the DMP, and at the sole discretion of Department of Water Resources (DWR), credit may be issued to the local maintaining agency (LMA) sponsor for a portion of project costs incurred after execution of the Project Agreement by the LMA.

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

- The request for issuance of credit must be submitted to DWR within 45 days after the receipt of the fully executed Project Agreement from DWR.
- Costs requested for credit must be incurred after the LMA has executed the Project Agreement.
- The eligible work or expenditure that generates credit must be specific to the damage necessitating the repair, and must be directly related to the planning, design, or construction of the DMP repair project as scoped in the Project Agreement.
- Costs requested for credit must be for work performed in full compliance with all applicable federal, state, and local requirements. DWR, at its sole discretion, may waive this prohibition, particularly where an LMA’s failure to secure a required permit was inadvertent. However, credit will not be offered for any costs incurred without all permits required by the Central Valley Flood Protection Board.

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

- Total credit used may not exceed 50 percent of the total project cost.
- Credit issued for a DMP repair project that cannot be applied to the project, or that cannot be applied due to availability of funding, may be retained and used for another project, under the same conditions as those of the project for which it is issued plus any additional conditions of the other project.

3.0 REQUIREMENTS FOR DISBURSEMENT OF FUNDS

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

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

3.1 Conditions of Reimbursement

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

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

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

- DWR will apply a maximum State funding of $2,000,000 per project. DWR’s Director may authorize variances to this restriction to fund projects under exceptional circumstances.

- No more than 10 percent of the total project cost may be reimbursed as a contingency, and only as such funding is justified, except with the express written approval of DWR.

- Contingency funds may only be used for an item or task in the Project Agreement with prior written approval from DWR. If the contingency funds are to be used for work other than the items or tasks in the Project Agreement, the LMA sponsor must first obtain the express written approval of DWR.

- The LMA sponsor must describe and justify the proposed use of any contingency funds, including identification of the contract item or task, in the required progress reports.

- If contingency funds are not available, cost overruns for individual contract items or tasks will be covered only to the extent to which reallocation of unexpended funds from other contract items or tasks is permitted under the Project Agreement.

- All reimbursement is subject to availability of funds.

- Funds will not be disbursed to reimburse costs incurred by the LMA sponsor unless the LMA sponsor is in compliance with all applicable environmental laws and requirements (e.g., CEQA, environmental permits, and NEPA, if federal funding or approvals are included in the project).

- Funds will not be disbursed to reimburse costs incurred by the LMA sponsor until all required permits for the work to be reimbursed have been obtained.

### 3.2 General Conditions for Advance Payments

At the sole discretion of DWR, eligible project costs may be covered by advanced payments of the state cost-share to be negotiated with the LMA during development of the Project Agreement. Advances, if applicable, may be limited to specific project-related tasks required prior to project construction, such as the acquisition of property rights. When advanced payments are applied to project construction, the Project Agreement will include requirements for the LMA sponsor submit work plans at quarterly or otherwise specified intervals. Along with the work plan, the LMA sponsor will be required to provide statements of incurred eligible project costs. If the state determines advances in that advance funding period exceed actual costs in that same period, such amounts may be applied against advances in succeeding periods. The state’s total amount of all advance payments shall not exceed 75 percent of the total estimated cost in the state’s share of eligible project costs payable under the Funding Agreement.

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

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

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

3.4 Final Payment

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

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