

SYSTEMWIDE MULTIBENEFIT INITIATIVES BRANCH,
DIVISION OF MULTIBENEFIT INITIATIVES

SYSTEMWIDE FLOOD RISK REDUCTION PROGRAM GUIDELINES

FINAL

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Acronyms and Abbreviations

BWFS	Basin Wide Feasibility Study
CVFPB	Central Valley Flood Protection Board
CVFPP	Central Valley Flood Protection Plan
CVFSCS	Central Valley Flood System Conservation Strategy
DMI	Division of <u>Multibenefit</u> Initiatives
DWR	Department of Water Resources
NGO	Non-governmental organization
O&M	Operations and Maintenance
Program	The Systemwide Flood Risk Reduction Program
PSP	Proposal Solicitation Package
RFMP	Regional Flood Management Plan
SFRRP	Systemwide Flood Risk Reduction Program
SPFC	State Plan of Flood Control
USACE	United States Army Corps of Engineers

1.0 SYSTEMWIDE FLOOD RISK REDUCTION PROGRAM

The Systemwide Flood Risk Reduction Program (Program) oversees the work necessary to implement on-the-ground projects that further the goals and objectives of the Central Valley Flood Protection Plan (CVFPP) and other systemwide priorities as identified by the Administration or the Legislature. State investments in system improvements may be through direct investment in new or improved facilities, or through proposal solicitations. System improvements will generally be implemented through partnership programs among the Department of Water Resources (DWR), Central Valley Flood Protection Board (CVFPB), and United States Army Corps of Engineers (USACE), and in coordination with local public agencies and non-governmental organizations (NGOs).

Program activities may include development of feasibility studies, technical studies, preliminary and final flood system designs, construction documents and specifications, or other memorandums and reports.

The Program may also fund construction, improvement of existing or augmentation to State Plan of Flood Control (SPFC) facilities.

1.1 Division of Multibenefit Initiatives

DWR's Division of Multibenefit Initiatives (DMI), Systemwide Engineering Section's objective is to implement a variety of multibenefit projects for flood risk reduction and ecosystem enhancement using multiple funding sources. The Program prioritizes multibenefit water management strategies through watershed-scale collaborations, and system-scale water and flood planning. DMI strives to:

- Use public funds for projects that maximize value for Californians and the State's ecosystems.
- Maximize use of finite landscapes in the State's waterways and flood system by proposing projects that create multiple benefits to ecosystems, habitats, and species.
- Recognize the interconnectedness of water resources management at the watershed and eco-region scales and respect each region's unique governance, perspectives, needs, and priorities.

1.2 State Plan of Flood Control (SPFC)

The Program described in the CVFPP supports projects within the State Plan of Flood Control. Collectively, the facilities, lands, programs, conditions, and mode of operations and maintenance (O&M) for the State-Federal flood protection system in the Central Valley are referred to as the State Plan of Flood Control (SPFC). This SPFC Descriptive Document (November 2010) was the first time that an inventory of the SPFC has been compiled or referenced in a single document. Until then, much of the information on the SPFC had been individually maintained for each of the many flood protection projects that constitute State-federal flood protection along the Sacramento and San Joaquin rivers and tributaries.

The *SPFC Descriptive Document Update* (December 2016 and February 2022) documented changes to the SPFC between 2010 and 2022 and exist as references to be used in

conjunction with the 2010 document. This document is anticipated to be updated in conjunction with the CVFPP approximately every 5 years.

1.3 Central Valley Flood Protection Plan (CVFPP)

The CVFPP, adopted in January 2012 and updated in 2017 and 2022, pursuant to the Central Valley Flood Protection Act and Water Code sections 9600-9625, established an integrated systemwide approach to improving flood management in the areas currently receiving flood protection from State Plan of Flood Control facilities.

The CVFPP is updated every 5 years to refine system needs, prioritize recommended actions, develop high level implementation schedules and funding plans for the recommended actions, and track progress of implementation actions. In accordance with Water Code requirements, DWR considers the following outcomes to guide investment decisions and project prioritization for system-wide improvements:

1. Urban and rural flood risk reduction and increased resiliency by addressing existing system capacity constraints, lowering flood stages, and providing additional capacity for the purpose of accommodating potentially higher flows in the future.
2. Improved ecosystem functions by integrating the recovery and restoration of key physical processes, self-sustaining ecological functions, native habitats, and species into flood management system improvements.
3. Continued agricultural, natural resource, and economic sustainability. A long-term sustainable operations and maintenance program that provides for flood, ecosystem, and local initiative needs.
4. Improved O&M. Reduce systemwide maintenance and repair requirements by modifying the flood management system in ways that are compatible with natural processes, and adjust, coordinate, and streamline regulatory and institutional standards, funding, and practices for operations and maintenance, including significant repairs.

1.4 Approach to Flood Management

The process to modernize the flood system accelerated in 2007 when the California legislature passed the Central Valley Flood Protection Act (Stats. 2007, ch. 364), directing DWR to prepare the CVFPP. The CVFPP (updated in 2017 and 2022) was developed with stakeholders and local, State and federal agencies working together to recommend high-level solutions for the flood management system, including ecosystem needs and emerging information regarding climate change.

The 2012 CVFPP also directed DWR to develop a Sacramento River Basin Wide Feasibility Study (BWFS) and a San Joaquin River BWFS. The two BWFSs refined the scale and locations of CVFPP systemwide improvements, and incorporated ecosystem improvement information from the Central Valley Flood Protection Plan Conservation Strategy (Conservation Strategy) and information from locally-led regional flood management plans (RFMPs).

As a result, identification of flood risk reduction projects is guided by the CVFPP and informed by the BWFSs, the Conservation Strategy, and RFMPs. By drawing information

from these sources and ongoing input from stakeholders, DWR develops projects that will reduce flood risk, improve ecosystems and addresses difficult policy issues important to local stakeholders.

1.5 Multibenefit Flood Projects

The Program will continue the process of improving public safety by upgrading critically important components of aging SPFC facilities, by providing additional flood system capacity and resiliency, while enhancing ecosystems and providing for other benefits. Multibenefit flood management projects are developed by DWR as part of the approach to flood management.

Implementation of a systemwide approach to flood management in the Central Valley will increase the flood carrying capacity of the system. Diverting additional flood flows into bypasses reduces flood stages in rivers and contributes to decreased flood risk for urban, small, and rural communities. Additional capacity also provides resiliency to the projected effects of climate change.

Multibenefit projects will incorporate other important and significant opportunities for aquatic and terrestrial habitat improvement, continued agricultural production, recreation and other benefits. The multibenefit nature of projects can be achieved through open communication among numerous agencies and local interests over a sustained period of time, thereby contributing to broad support for implementation of flood system improvement projects.

1.6 System Repairs

At times it may be necessary to repair a levee, weir, or other SPFC facility in a manner that does not provide for multiple benefits. While not the primary focus of this Program, such repairs assist in the integrity of the flood system systemwide and may be funded through this Program, as necessary and as funding sources allow.

2.0 PROGRAM IMPLEMENTATION ALTERNATIVES

There are several alternatives for implementing the Program. An integrated systemwide approach to flood risk reduction recognizes that flood management actions are interconnected with other planning and management activities within an integrated and sustainable water resources system, such as: land use planning, coordination across geographic and jurisdictional boundaries, ecosystem and habitat protection and environmental and economic sustainability. An integrated systemwide approach to flood risk reduction can achieve multiple benefits and provide opportunities to integrate ecosystem restoration within flood risk reduction projects. For example, construction of system improvements such as weir expansions and levee setbacks within the existing bypasses, or construction of new bypasses, will provide opportunities to expand and connect habitat within the flood management system, considerably improving the ecosystem while increasing flood carrying capacity and overall resiliency of the system.

The focus of the Program is to implement flood system improvements that have cross-regional benefits and that when taken together offer multibenefit opportunities to the extent feasible.

As identified in the following sections, program implementation may include directed actions, and proposal solicitations.

2.1 State Led

State led projects are completed by DWR staff from initiation to design and through construction. DWR Project Managers may also use the State contracting process to hire outside contractors to complete specific elements of a project if DWR staff are unavailable or the specific element requires a more specialized skillset.

2.2 Directed Actions

Directed actions are specific projects awarded funding at the discretion of the DWR Director outside of a public proposal solicitation process. Direct expenditure projects are projects proposed by DWR either in response to a solicitation from a stakeholder, another government entity, or on its own initiative. Directed actions by DWR may utilize public entity agreements, also known as project agreements, to partner with local public agencies to complete entire projects or to complete separate elements of larger projects. Directed actions generally depend on the public entity's resource capability and willingness to take on the work.

2.3 Proposal Solicitations

Proposal solicitations are common practice for government agencies to make funds available to other agencies to complete projects based on competitive ranking. Proposal solicitations generally work well to complete multiple smaller scale projects across multiple geographic regions and serves to support flood risk reduction and multibenefit objectives.

2.4 Envisioned Systemwide Projects

Priority projects that met the goals and objectives envisioned in the CVFPP or other systemwide priorities as identified by the Administration or the Legislature may compete for limited funding for planning, design, and construction include, but are not limited to:

- Yolo Bypass facilities improvement such as expansion of Fremont Weir, Yolo Bypass Sacramento Weir and Sacramento Bypass
- Reservoir Management Projects, including Folsom Dam Joint Federal Project cost sharing
- Feather River-Sutter Bypass multibenefit improvements
- Flood Plain Storage Projects
- Flood-MAR projects (using flood water for managed aquifer recharge)

3.0 PROJECT PRIORITIZATION

Generally the Program will examine a number of factors when selecting and implementing a project. These factors may take on various degrees of importance based on the needs of the project and funding sources available. Any prioritization and criteria for a specific solicitation

will be defined in a future Proposal Solicitation Package (PSP). Future criteria may include, but are not limited to the following:

- Total project cost
- Flood risk reduction and other benefits, such as ecosystem restoration
- Regional stakeholder interests
- Land use constraints
- Project complexity
- Environmental and federal permitting schedules, etc.

4.0 FUNDING REQUIREMENTS

The Program receives funds from several sources. These include the State’s General Fund, funds received through the payment of fees, and general obligation bond proceeds. Each of these funding sources have different requirements as to what projects or activities may be funded as well as how the funds may be used. DWR will allocate available funding based on the requirements of each funding source and how those funds may best be used. Under no circumstances may an applicant or funding recipient request a different funding source be used for its project. The allocation of funds from a specific funding source to a specific project is within the sole discretion of DWR.

In any future proposal solicitations seeking applications for a competitive solicitation, the specific funding source(s) will be clearly stated along with any specific requirements and restrictions of the funds. Currently, the Program anticipates disbursing funds pursuant to five ~~six~~ general obligation bond initiatives: ~~Proposition 1E (Pub. Resources Code, § 5096.800 et seq.);~~ Proposition 50 (Wat. Code, § 79500 et seq.); Proposition 84 (Pub. Resources Code, § 75001 et seq.); Proposition 204 (Wat. Code, § 78500 et seq.); Proposition 1 (Wat. Code, § 79700 et seq.); and, Proposition 68 (Pub. Resources Code, § 80000 et seq.). Regardless of the funding source(s), the funding recipient will be required to enter into a funding agreement with DWR. A specific funding agreement template will be provided as an appendix to any future PSP published by DWR. Below are several requirements that will be within a funding agreement with DWR. This list is not exhaustive.

4.1 Requirements for All State Funding Sources

4.1.1 Indemnify and Hold Harmless

As part of the funding agreement, funding recipients shall indemnify and hold harmless the State, its officers, agents, and employees from any and all liability from any claims and damages (including inverse condemnation) arising from the planning, design, construction, repair, replacement, rehabilitation, maintenance, and operation of the project, and any breach of the funding agreement.

4.1.2 Conflict of Interest and Confidentiality

All participants are subject to State 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 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.

As part of the conflict of interest requirements, individuals working on behalf of a funding recipient may be required by the State 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.

Funding recipients should be aware that when submitting a proposal to the State, they will waive their rights to the confidentiality of the contents of the proposal. All proposals, as well as all project materials maintained by the State are subject to disclosure pursuant to the California Public Records Act (Gov. Code, § 6250 et seq.).

4.1.3 Labor Code Compliance

As part of the funding agreement, the funding recipient shall agree to be bound by all the provisions of the Labor Code regarding prevailing wages and shall monitor all contracts subject to reimbursement from the funding agreement to assure that the prevailing wage provisions of the Labor Code are being met. Current Department of Industrial Relations (DIR) requirements may be found at: <http://www.dir.ca.gov/lcp.asp>. For more information, please refer to DIR's Public Works Manual at: <http://www.dir.ca.gov/dlse/PWManualCombined.pdf>. The funding recipient will also affirm that it is aware of the provisions of section 3700 of the Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance.

4.1.4 California Environmental Quality Act (CEQA)

All activities funded pursuant to the Program must comply with CEQA. (Pub. Resources Code, § 21000 et seq.) Any work that is subject to CEQA and funded under a funding agreement shall not proceed until documents that satisfy the CEQA process are received by the DWR and the DWR has completed its CEQA compliance. Any work funded under the Program that is subject to CEQA shall not proceed until and unless approved by DWR; such approval is fully discretionary. If CEQA compliance by the funding recipient is not complete at the time a funding agreement is executed by the parties, once DWR has considered the environmental documents, it may decide to require changes, alterations, or other mitigation to the Project; or to not fund the Project. Should DWR decide to not fund the Project, the funding agreement shall be terminated.

4.1.5 Competitive Bidding and Procurement

A funding recipient's contracts with other entities for the acquisition of goods, services, and construction of public works with funds provided by the State must be in writing and shall comply with all applicable laws and regulations regarding the securing of competitive bids and undertaking competitive negotiations. If a funding recipient does not have a written policy to award contracts through a competitive bidding or sole source process, the Department of General Services' State Contracting Manual rules must be followed. They are available online at: <https://www.dgs.ca.gov/OLS/Resources/Page-Content/Office-of-Legal-ServicesResources-List-Folder/State-Contracting>.

4.2 Requirements for General Obligation Bond Funds

The source of much of the Program's available funding is the proceeds generated by the sale of tax-exempt general obligation bonds. These are also referred to as GO Bond Funds or Proposition funds. In addition to the requirements applicable to all state funding sources set forth above, there are some unique requirements set forth either in State law or by (federal) Internal Revenue Service regulations applicable to all GO Bond funds. Other requirements may be also be set forth in the specific bond act and these requirements will be stated in any future PSP allocating funds from a specific GO Bond.

4.2.1 Income Restrictions

Any capital asset acquired or constructed in any part with GO Bond funds may not be used to generate income of any kind. The funding recipient shall agree that any refunds, rebates, credits, or other amounts (including any interest) accruing to or received by the funding recipient pursuant to this Program shall be paid by the funding recipient to the State, to the extent that they are properly allocable to costs for which the funding recipient has been reimbursed by the State pursuant to a funding agreement. Additionally, all disbursements from the State to the funding recipient must be deposited in a non-interest-bearing account.

4.2.2 General Overhead and Indirect Costs

GO Bond funds may only be used for direct project costs. General overhead and indirect costs will not be paid. "Indirect Costs" means those costs that are incurred for a common or joint purpose benefiting more than one cost objective and are not readily assignable to the funded project (i.e., costs that are not directly related to the funded project). Examples of Indirect Costs include: central service costs; general administration of the funding recipient; non-project-specific accounting and personnel services performed within the funding recipient's organization; depreciation or use allowances on buildings and equipment; the costs of operating and maintaining non-project-specific facilities; tuition and conference fees; and, generic overhead or markup. This prohibition applies to the funding recipient and any subcontract or sub-agreement for work on the funded project that will be reimbursed by the State.

5.0 GUIDELINE AMENDMENTS

These Guidelines may be amended after completion of the initial proposal solicitation. Amendments to the Guidelines will be publicly posted and made available for comment for at least 45 days.

APPENDIX A – ADVANCE PAYMENT PROCEDURES

Advance payments under State funding agreements are prohibited unless authorized by statute. Below are the procedures by which an entity may apply for and receive advance pay of their award from the Department. Recipients of advance payment have a fiduciary responsibility to the people of the State.

Application Process

Upon approval of the final award, the Department shall notify the awardee in writing of its award and the opportunity to apply for advance payment. The Notice of Award shall include an advance payment form. The awardee shall have up to 90 calendar days from the date of the Notice of Award to return the form and provide all applicable backup documentation if advance payment is requested. If the awardee fails to return all completed forms and backup documentation within 90 calendar days, the awardee has forfeited the right to request advance payment for its award. If documents are incomplete or inadequate, the Department shall reach out as soon as it is aware of the issue to notify the awardee of the issue. Failure of the awardee to respond to Department requests for clarification or further documentation shall result in a denial of the request for advance payment. The Department will notify the awardee within 90 calendar days of receipt of a complete advance payment request on its final decision. The Department's final decision is not appealable.

An awardee's application for advance pay must include its most recent financial documents that include sufficient detail to enable the Department to determine the financial and institutional capacity of the awardee, the details of the use of any authorized advance payment, and to determine the risk being taken by the Department on behalf of the taxpayers and/or bond holders providing the funds. Failure to provide adequate documentation shall result in the awardee being deemed ineligible for advance payment. To apply for advance payment, the awardee must:

- Submit a statement of need explaining its need for advance payment. The awardee must submit the most recent three years of verifiable documentation supporting its claim and demonstrating its need. These may include:
 - Most recent audited financial statements.
 - Revenue and cost statements.
 - Other financial statements, including bank statements or reports from an agency's treasury.
 - Tax returns (if applicable).
- Submit a statement explaining the awardee's ability to manage the approved project and its finances. The awardee must submit verifiable documentation supporting its claim. These may include:
 - Audit reports or other financial reviews completed within the last three years.
 - List of its other projects (current and past) including scope, duration, and funding partners.
 - Organization chart of employees responsible for approved project.
- Submit a detailed work plan, budget, and schedule showing how the advance payment will be used. These will need to break down activities and corresponding expenditures on a quarterly basis.
 - For habitat restoration projects, if not previously identified in the awardee's application, the awardee will need to list which threatened and/or endangered species under the federal Endangered Species Act (16 U.S.C. § 1531, et seq.) or California Endangered Species Act (Fish & G. Code, § 2050 et seq.), for which the project is providing habitat.
- For non-profit (private) awardees, demonstrate its good standing as a tax-exempt

organization.

- For non-profit (private) awardees, submit verification that all advanced State funds provided shall be deposited into a separate federally insured bank account that either tracks interest earned, or is non-interest-bearing, as required by the Department.

Some of these documents (e.g., detailed work plan, budget, and schedule) may have been included in your initial application for funding. It is not necessary to resubmit these documents, but if there have been changes since the initial application, please document those changes when submitting your request for advance payment.

Approval Process

Once the Department has received a complete application for advance payment, it shall inform the awardee within 90 calendar days of its decision. The final decision will be in writing and will either be a denial or approval of the request. This decision is not appealable.

If the awardee's request is denied, the awardee may request the reason(s) for denial from the Department. If the awardee's request is approved, the awardee will be notified of the amount approved and the conditions of approval. The maximum amount that may be awarded is 25% of the full award amount or the project's reasonable needs based on an immediate six-month planning period, whichever is the lesser amount. The project's immediate six-month need will be based on the awardee's submissions during the application process.

The notification shall also state the frequency of the accountability and progress reports to be submitted, the timeline by which advance payment funds are to be spent, and any other restrictions deemed necessary by the Department. Accountability report and progress report templates shall be provided to the awardee. The awardee must respond within fourteen calendar days accepting the terms of the advance payment; failure to notify the Department within fourteen calendar days shall be considered as the awardee's refusal to accept the advance payment terms, and the awardee shall no longer be eligible for advance payment. Note that, although advance payment has been authorized, no disbursement of funds can occur until a funding agreement incorporating the terms and conditions of the advance payment's use has been executed.

Use of Advance Payment

Advance payment funds may be used for any eligible project costs as set forth in your funding agreement and its work plan except for the purchase of real property or interests in real property. Those expenses must use the existing State process whereby the real property purchase price (plus escrow fees) is deposited into a qualified escrow account after State review of Department of Water Resources and/or Department of General Services-approved appraisals. The "purchase" only includes the amount deposited into a qualified escrow account or costs associated with obtaining financing. This does not include those items necessary and directly related to the due diligence for acquisition of real property or interests in real property (e.g., appraisals, environmental assessments, legal fees, surveys, recording fees, etc.); these may be paid for with advance payment funds.

During any period in which a funding recipient is using advance payment, it shall submit an accountability report and a progress report to its grant manager for review and approval. These reports must be submitted on the time schedule set forth in the funding agreement but shall be no less frequently than once per quarter (i.e., every three months). If a funding recipient is late in submitting any of its required reports, it is grounds for termination of its privilege to continue using advance payment on its existing project and any potential future

projects that may receive funding from the Department. Accountability Report and Progress Report templates shall be provided to each funding recipient.

Accountability reports are intended to demonstrate the proper use of the State's fiscal resources. Accountability reports must include:

- All supporting documentation of funds spent (e.g., receipts, invoices, etc.).
- Any updates to the project's projected spending plan for the next three months, six months and for the remainder of the project's implementation period.
- If applicable, a statement that the funds have been deposited and use of advance payment funds were withdrawn from a federally insured, non-interest-bearing account and is separate from other funding sources.
- If applicable, documentation of interest earned during the reporting period. Any interest earned shall be considered part of the funding award and shall be used towards the project.

Progress reports are intended to demonstrate the proper implementation of the project.

Progress reports must include:

- Actions taken by the funding recipient on the project.
- A statement of milestones achieved, and problems encountered on the project.
- A statement of whether the project is on schedule.
- If the project is not on schedule, the reasons for the delay and proposed remedy(-ies), and an updated schedule.

Request for Further Advance Payments

Once the initial authorized advance payment has been spent by the funding recipient, further advance payments may be allowed. Further use of advance payments by a funding recipient may only be granted if there was prudent use of the initial advance payment, adherence to all corresponding requirements (e.g., timely submission of deliverables and reports), and compliance with all requirements in the funding agreement. Further advance payments may be requested in writing up to 90 days in advance of the anticipated exhaustion of the initial amount advanced. However, unless requested by the Department or if there has been a change in circumstances, no additional documentation need be submitted. Further advance payments shall only be permitted in the amount of a project's reasonable needs based on an immediate six-month planning period, or 25% of the full award amount, whichever is the lesser amount. However, under no circumstances may advance payments result in the reduction or elimination of the amount of required withholding (retention) or any required cost share amount. Any determination regarding further advance payment(s) must be made in writing.

Emergency Advance Payment Requests

During the course of implementing a project, a funding recipient may have an emergency arise that may significantly affect its cash flow or available capital. In this case, it may be possible to award a funding recipient and advance payment based on emergency needs. An "emergency" is a sudden, unexpected occurrence, beyond the control of the funding recipient. A funding recipient's mismanagement of its resources or lack of sufficient planning does not constitute an emergency. If a funding recipient has previously been denied a request for advance payment, it is not eligible to receive an emergency advance payment. A request for emergency advance payment is open to any funding recipient that has been previously awarded advance payment (whether it accepted it or not), and any funding recipients that did not apply for an advance when permitted to do so.

To make a request for an emergency advance payment, a funding recipient will need to provide a statement explaining the nature of the emergency and how that emergency necessitates the need for advance payment, along with supporting documentation. If the funding recipient has not previously applied for advance payment, all the documentation required for an initial application for advance payment must be submitted as well. Approval and use of an emergency advance payment is subject to the same requirements as listed above and while the Department shall endeavor to expedite an emergency request, however the disbursement of funds will be through usual State payment processes.

Reduction of Withholding Amount

Funding agreements are required to have a minimum withholding amount of ten percent (10%) of the total award amount pending the satisfactory completion of the project and submission of all deliverables. (Gov. Code, § 10346; State Contract Manual, vol. 1, § 7.33.) This minimum amount is required unless there is statutory authority permitting a reduction or elimination of the withholding amount.

Water Code section 550 permits the Department to reduce or eliminate the withholding amount for funding agreements with local public agencies that have been approved and receive an advance payment, and the project's purpose is to (1) restore habitat for threatened or endangered species, and/or (2) improve flood protection. For any such project that has also been awarded an amount of \$10,000,000 or more, the withholding amount shall be reduced to five percent (5%) and set forth in the funding agreement.