



CENTRAL DELTA WATER AGENCY

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PC-46

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July 9, 2008

Via email mikemi@water.ca.gov

Mike Mirmazaheri
Program Manager
Delta Levee Program
Department of Water Resources
1416 Ninth Street
Sacramento, CA 94236

Re: Five (5) Year Levee Plan

Dear Mr. Mirmazaheri:

Thank you for the opportunity to provide a suggested five (5) year levee plan. This submittal is intended to provide the overarching plan within which Districts would submit five (5) year plans outlining the intended levee work categories with rough estimates of cost. These work plans will necessarily change with conditions in the field and progress of work. The five (5) years included are 2009-10, 2010-11, 2011-12, 2012-13 and 2013-14. For 2008-09 we suggest the same priorities. For Delta Levees Proposition 84 provided \$275 Million and Proposition 1E \$500 Million for a total of \$775 Million. For the five years it is assumed that at least \$100 Million will be available each year.

Our view of the need to preserve Delta levees extends to all of the present levee systems. The inter-relationship of the various islands and tracts due to seepage, wind wave generation and as habitat for both local and migratory fish and wildlife mandates that the plan should attempt to preserve all levee systems with due consideration of the Legislature's concern that preservation of all may not be economically justifiable. Outlined herein are the priorities and constraints which will provide economic support with appropriate justification.

The Legislature's findings and declarations in Water Code sections 12981 and 12982 provide the guidance in which we concur.

“§ 12981. Unique resources with statewide significance; preservation

(a) The Legislature finds and declares that the delta is endowed with many invaluable and unique resources and that these resources are of major statewide significance.

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(b) The Legislature further finds and declares that the delta's uniqueness is particularly characterized by its hundreds of miles of meandering waterways and the many islands adjacent thereto; that, in order to preserve the delta's invaluable resources, which include highly productive agriculture, recreational assets, fisheries, and wildlife environment, the physical characteristics of the delta should be preserved essentially in their present form; and that the key to preserving the delta's physical characteristics is the system of levees defining the waterways and producing the adjacent islands. However, the Legislature recognizes that it may not be economically justifiable to maintain all delta islands.

(c) The Legislature further finds and declares that funds necessary to maintain and improve the delta's levees to protect the delta's physical characteristics should be used to fund levee work that would promote agricultural and habitat uses in the delta consistent with the purpose of preserving the delta's invaluable resources."

"§ 12982. Public benefit from privately maintained levees

The Legislature further finds and declares that while most of the delta's levees are privately owned and maintained they are being subjected to varied multiple uses and serve to benefit many varied segments and interests of the public at large, and that as a result of the varied multiple uses of such levees, added maintenance costs are being borne by adjacent landowners."

Although the smallest of islands may at first blush appear to be expendable, the habitat value (which in many cases is supported with private funds) would be lost. Such habitat value is extremely difficult to replace especially in terms of supporting habitat for waterfowl in the Pacific Flyway and providing meandering shoreline. With increasing development along the entire west coast of the United States, the opportunity to preserve supporting habitat for the Pacific Flyway is greatly diminishing. It is also extremely difficult to replace the meandering shoreline habitat and meandering waterway recreational opportunity provided by even the smallest levee systems. The impacts of seepage and wind-generated waves on surrounding levees and lands are assumed to be less critical with the flooding of smaller islands however, significant impacts can still result. Scour in adjoining channels resulting from levee breaks or even from the ongoing tidal flow of water in and out of the flooded area, scour from rerouting of channel flow (including the flow of water to the export pumps) and changes to the land surface such as from oxidation of organic soils can result in major long lasting adverse impacts to adjoining areas.

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Limited Ability to Generate Local Revenue for Cost Share and Project Funding

The limited ability to generate revenue from local assessments to meet cost-sharing requirements and to fund the levee work in advance of reimbursement is a primary constraint under the Levee Subvention Program. Local assessments are based on allocations of the benefits derived from the levee-related services provided by the local levee maintaining districts. In most cases these are reclamation districts. Pursuant to California Constitution Article XIII D increases in assessments must be submitted to an assessment ballot proceeding where a majority protest based on the maximum dollar amounts to be assessed will stop the assessment. The benefit allocations are typically based on land use where the ratios for allocation from one use to another are fairly well bracketed and the constraint is the agricultural use ability to pay. Further consideration of ability to pay for districts which have significant agricultural use is unnecessary as the limitations are clearly demonstrated by previous analysis. As to urban levee systems, it is important to continue to recognize that State funding is intended to provide contribution from beneficiaries of the levee system other than the landowners within a particular district and to in part compensate for damages to the levee system caused by users of the Delta other than the landowners. We believe the funding priorities and cost shares set forth herein adequately account for ability to pay for all eligible districts including those with urban levee systems.

As presently structured, the Delta Levee Subvention portion of the Delta Levee Program cannot facilitate timely completion of urgently needed levee work. The substantial under-funding of the Delta Levee Subvention Program in recent years coupled with substantially increased cost of meeting regulatory requirements has left most participating districts with very little capability to fund additional levee work.

FEMA Eligibility

FEMA is applying a very rigid interpretation of the requirements under the so-called Delta Hazard Mitigation Plan (HMP). Instead of the good faith progress approach applied in previous years, FEMA has denied eligibility if any part of a levee system fails to meet HMP requirements. For the 2005/06 flood event, the one (1) foot above the 100 year flood elevation requirement was the greatest constraint. Portions of the Delta levees are settling and can be expected to continue settling for many years to come. The crowns of levees on which county roads and State highways are located are typically raised less frequently to reduce disturbance of costly road surfacing. Changes in historical benchmark elevations have added to the non-compliance. Although federal funding has not been made available to support the Delta levee programs, federal Disaster Assistance has at times been substantial. Priority funding is needed to re-establish and maintain HMP compliance to help assure future FEMA assistance. HMP compliance with a robust levee program should demonstrate a good faith effort on the part of the State and locals towards reasonably reducing the threat of future flooding. We would expect such effort to be recognized by FEMA.

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HMP is not an acceptable levee standard but rather a means of measuring progress to satisfy FEMA. The PL 84-99 agricultural standard is viewed as the minimum acceptable level of protection against failure due to flooding. Any other higher levels of protection should be determined and prioritized by DRMS, Delta Vision, etc. and funding for those more expensive fixes would be expected to come from other sources of state money and other beneficiaries.

5-Year Plan

Definitions - Urban Islands and Tracts are those with levee systems which protect areas with existing and ongoing urban development where the levees have at one time been accredited or are in the process of being accredited as meeting FEMA requirements for urban development.

Non-Urban Islands and Tracts are those other than Urban Island and Tracts.

Project levee and non-project levee shall be as defined in WC 12980.

Special Project Program - The Special Project portion of the Delta Levee Program should incorporate broader funding of needed levee work throughout the Delta. We suggest that the Special Levee Project program be separated into two parts: State Special Projects and Local Special Projects.

The State Special Projects would continue the past practice with emphasis for the eight (8) western Delta islands thought to be most important to restrain salinity intrusions, assistance for levees protecting the towns of Thornton and Walnut Grove and for other levee projects. For the 5 year planning period, the expenditures should be focused on levee improvement. Other expenditures including habitat enhancement should not exceed ten (10) percent of the amount of funding for the State Special Projects.

The Local Special Projects would be applied throughout the Delta to the non-project, non-urban islands and tracts other than the eight (8) western Delta islands. The first priority for the local special projects should be funding of work necessary to achieve and maintain HMP requirements on the non-project, non-urban islands and tracts and achieving and maintaining minimum project levee standards on project levees. This work should be funded 100% by the State. The non-project levee work should be designed to raise crown elevations to one (1) foot above the 100 year flood elevation plus an additional one-half (1/2) foot to account for periodic levee settlement. For areas with public roadways the design should include the one (1) foot above the 100 year flood elevation plus an additional one (1) foot. For non-project levees, the crown width should at a minimum meet the HMP required sixteen (16) feet but should seek to achieve a minimum of twenty-two (22) feet on levees without public roadways and the then current crown width or twenty-eight (28) feet (whichever is greater) for levees with such roadways. The HMP required all weather road on the levee crown must be included. The second

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priority should be funding ninety percent (90%) of the cost of habitat mitigation related to non-urban islands and tracts for all priorities of work including PL 84-99 and DWR Bulletin 192-82 agricultural standards. The third priority should be funding ninety percent (90%) of the cost of work on non-project, non-urban islands and tracts to reach the PL- 84-99 or DWR Bul. 192-82 agricultural standard with a height of eighteen (18) inches above the 100 year flood elevation plus one-half (1/2) foot of additional elevation for levees without public roadways and one (1) foot of additional elevation for levees with public roadways. Crown width should be twenty (20) feet on levees without public roadways and the then current crown width or twenty-four (24) feet (whichever is greater) for levees with such public roadways.

Levee Subvention Program

\$1,000.00 per mile deductible.

First Priority - 75% reimbursement up to \$20,000.00 per mile for annual levee maintenance.

Second Priority - 75% reimbursement for habitat mitigation.

Third Priority - 75% reimbursement for all levee work in excess of First Priority work up to an additional \$20,000.00 per mile including HMP work and work to meet the PL 84-99 or DWR Bul. 192-82 agricultural standards with an additional one-half (1/2) foot of crown elevation to account for periodic settlement on levees without public roadways and an additional one (1) foot on levees with public roadways. Crown width should be twenty-two (22) feet on levees without public roadways and the then current width or twenty-eight (28) feet (whichever is greater) for levees with such public roadways.

Fourth Priority - Third priority work in excess of \$20,000.00 per mile.

District Five Year Plans

Each participating district should provide a five year plan setting forth the general description and estimated dollar amount of work proposed for each of the categories set forth above assuming advances for the Subvention Program as currently applicable and payments by the State for Special Projects as invoices are received. Special State Projects and Special Local Projects will require specific plans and project review consistent with current practice. Local district development of plans, conduct of soil investigations and preparation of project documents will be funded through the Local Special Projects at a cost share of 90% State, 10% Local.

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Additional Priorities Established Through the Annual Allocation of Funding to the Following Categories: (assumes One Hundred Million Dollars per year)

Delta Levee Subventions	12 million
State Special Projects	44 million
Local Special Projects	44 million

If funding is insufficient to fund all acceptable projects in the Delta Levee Subvention and/or the Local Special Projects Categories for the particular fiscal year, the funding will be allocated within each category first, based on the specific priorities and second, prorated within the underfunded priority to fully fund a segment of qualifying work in each applying District. The proration will be based on the total lineal feet of acceptable levee work within the underfunded priority which is included in the application of a particular district as compared to the total lineal feet of acceptable levee work included in all applications for the particular fiscal year in the specific priority. The District may elect to receive the funding available to provide maximum State cost share for a segment of the work and defer the remainder of the work in the priority to a subsequent year. Any excess of funds within the Delta Levee Subventions or Special Local Projects Categories shall be applied first to fund any shortfall in the other category within the particular fiscal year and second to supplement funding in the particular category in the subsequent fiscal year.



DANTE JOHN NOMEILLINI
Manager and Co-Counsel

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cc: David Mraz via dmraz@water.ca.gov
Locals