

ITEM 2

Agenda of October 16, 2014

**TO: Board of Directors
Sacramento Area Flood Control Agency**

**FROM: Richard M. Johnson, Executive Director
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SUBJECT: EXECUTIVE DIRECTOR'S REPORT FOR OCTOBER 16, 2014

American River Watershed Common Features Project General Reevaluation Report

At the September 18th SAFCA Board of Director's Meeting, I indicated the USACE was seeking to release the draft American River Watershed Common Features Project Draft General Reevaluation Report/Draft Environmental Impact Statement/Draft Environmental Impact Report (Draft GRR) and we might be bringing a presentation to the October Board meeting. We have an issue that has arisen concerning the amount of cost sharing for the preferred alternative. Until that is resolved, the release of the report is on hold. We are going to wait to give the presentation to the Board until we know the final cost sharing and the Draft GRR is ready for public release.

American River Watershed, Common Features Project, Natomas Basin Update

As part of both the June 19th and August 21st Board meetings, I provided information on the issues and challenges that need to be resolved as we move forward with the transition within USACE. I want to reiterate and update those. SAFCA continues to work closely with the USACE and the State of California to resolve these issues. The USACE District has not yet received Water Resources Reform and Development Act of 2014 implementation guidance from Headquarters. This is needed to help move forward some of the administrative actions that are required.

There are some issues that need to be worked through with the USACE to determine the amount of credits the non-Federal sponsors will receive and if any more cash will be required from the non-Federal sponsors. Some of these issues include (1) whether the American River Watershed Common Features Project as modified by the Natomas Basin work is considered one project; and (2) how the lands, easements, rights-of-way, relocations and disposal (LERRD) requirements will be handled.

Cost Share Agreement

Since the State is the cost-sharing partner, the USACE cannot initiate construction until a cost sharing agreement is executed between the USACE and the State. The Water Resources Development Act (WRDA) 1986 requires a non-Federal cost-share for Federal flood control projects. Since the USACE is a nationwide agency, they strive to maintain consistency in how they administer projects across the country. They have developed standard cost-sharing agreements called Project Participation Agreements (PPA). Older projects were covered under a Project Cooperation Agreement (PCA). In general, the closer the PPA or PCA amendment is to the standard language already approved by the USACE, the quicker the review and approval.

Since the Natomas Basin Project was authorized as a modification of the American River Watershed Common Features Project, the non-Federal sponsors (State and SAFCA) have proposed the PCA for that project be amended. The State and SAFCA developed a draft Amendment to cover the Natomas Basin Project and have submitted it to the USACE Sacramento District (District) for its review. The non-Federal sponsors are trying to keep the language as close to standard as possible, but early construction of part of the project and credit issues, have the potential to make the PCA amendment more complicated. The USACE has indicated that because of these complications, a new PPA agreement may be needed.

Once the District and the sponsors reach agreement locally on the contents, it then has to go through the review and approval chain at the USACE including Division and Headquarters. The final approval is made by Assistant Secretary of the Army in Washington D.C.

How quickly this agreement can be executed with all of these complicating issues is one of the critical items that has to be completed before construction can be initiated. Also, the Administration will generally not budget for construction until they are confident that the cost sharing agreement will be in place in time for a construction contract to be advertised and awarded in that given Federal fiscal year.

Federal Credits

For a normal Federal flood control project constructed by the USACE, the non-Federal sponsors would pay 35 percent of the cost towards the design and construction of the project.

In this case, the non-Federal sponsors (SAFCA and the State) constructed a significant portion of the project under the State's Early Implementation Program. Prior to construction, SAFCA and the State received approval in concept by the Assistant Secretary of the Army (Civil Works) for potential crediting of this work under the provisions of Section 104 of the WRDA 1986.

The non-Federal sponsors believe they have met the overall non-Federal cost-share requirements for the Federal project with the funds expended for the early implementation construction.

Therefore, the non-Federal sponsors intend to pay the non-Federal share for most of the rest of the work to complete the Natomas Basin Project utilizing Federal credits. However, the credits have only been approved in concept. Before the credits can be utilized as the non-Federal cost share, credit packages have to be submitted, reviewed, and approved by the USACE.

The State and SAFCA have submitted to the USACE a draft of the first crediting package to receive USACE agreement as to the content and format of the credit packages. The District has provided comments back and SAFCA and the State are adjusting the package based on those comments.

It is important to get these approved as quickly as possible as the USACE cannot perform any significant design or construction activity without a non-Federal cost-share. Moving forward, these credits will serve as that non-Federal cost-share.

Design

The Federal FY 2014 Appropriations Bill included \$1.0 million in Federal funding to commence design work for Natomas. In order to proceed, the USACE needed the 35 percent non-Federal cost share in place in the form of a design agreement. At the April 17th Board meeting, the Board approved a design agreement with the USACE. The design agreement has been executed and the non-Federal funds have been provided to the USACE. Therefore, the USACE is moving forward with the design.

The President's Proposed FY 2015 Budget included \$625,000 to continue design work for Natomas. The non-Federal sponsors have the ability to provide to non-Federal cash match for that funding.

However, a significant amount of additional design funding is needed to complete the design and develop the construction contract documents. Some additional level of exploration and data analysis will also be required. It is anticipated the District will seek additional funding for design in the Federal FY 2015 work plan.

However, some non-Federal credits will have to be approved before a significant amount of additional Federal money can be spent on additional design work. The non-Federal sponsors will need to utilize their credits as their share of this increment of design work.

The USACE usually does not recognize credits until a PCA or PPA had been executed. However, the non-Federal sponsors are working with the USACE to find a way to utilize the credits as their share of the design costs.

This is critical because a delay in completing the design would lead to a delay in starting construction.

LERRD Responsibility

The USACE process varies from the process SAFCA employed in construction of the early portion of the Natomas Levee Improvement Program. Before the USACE can even put a construction project out to bid, any and all required lands, easements and right-of-way must be acquired and everything must be relocated out of the way so the USACE can proceed with construction unimpaired. Generally relocations cannot be done as part of the construction contract. The USACE will typically not be able to identify the LERRD requirements until the design is substantially complete.

WRDA of 1986 made LERRD's a non-Federal responsibility. However, Section 104 of WRDA 1986 allows for a non-Federal sponsor to receive credit for early implementation of an authorized USACE project. This is the authority under which the non-Federal Natomas credits were approved in concept and it is under these rules that the credits will be applied. The USACE regulations state:

“As a consequence of crediting non-Federal construction costs against LERRD requirements some costs for LERRD may become a Federal responsibility.”

Since the non-Federal sponsors believe that they have met all the cost-share requirements moving forward, future LERRD's could become a fiscal responsibility of the USACE. However, since the rules give the USACE discretion as to whether to accept such responsibility this will be a point of discussion.

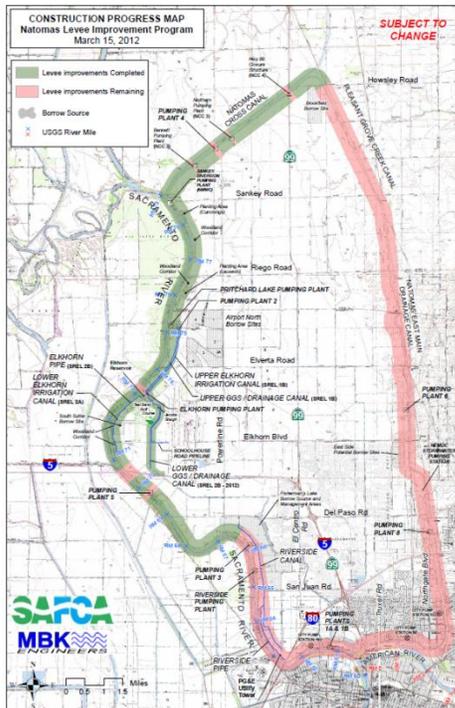
Another factor is that after WRDA 1986, new projects did not require the USACE to perform the LERRD's since it was a non-Federal responsibility. Therefore, the District basically disbanded its capability to perform major LERRD's. Unfortunately, the portion of the Natomas Project left to be constructed has extremely complex LERRD's in place. As a result, even if shifting LERRD responsibility to the USACE could be achieved as a matter of policy, this shift might not be desirable from a practical standpoint due to the potential for delays in property acquisition which could subsequently slow project construction. SAFCA continues to work with the State and the USACE to figure out the best way to move forward.

Funding

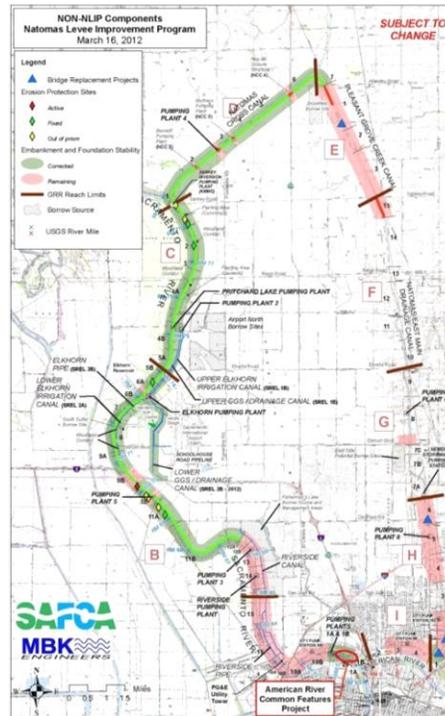
Once we get through the administrative portions of the activities, the overall schedule will largely be driven by when the Federal funding can begin and the amount of Federal appropriations that are available. In addition, if any additional State funding is required, there is the question whether there are enough Proposition 1E funds available, or would other State general funds be required.

Prioritization of Work

There are a number of factors that will drive how the USACE proceeds with the remaining work in Natomas. About 80 percent of remaining project improvements are needed to address 100-year deficiencies with 20 percent needed to address deficiencies for 200-year only. SAFCA will continue to work with the USACE to address the worst risk first and complete the 100-year deficiency work first. Where work is done, it will be completed to the 200-year requirements. However, there is a difference in the reaches that have to be completed for the 100-year versus the 200-year. The two graphics below demonstrate the differences:



200-Year Requirements



100-Year Requirements

Transition to Self-Administration

By way of update on the transition to a self-administered personnel system, we are in the final phase of the CalPERS process. Once we have a final determination from CalPERS we will need approximately two months to complete the transition. The City of Sacramento (City) and the County of Sacramento (County) continue to be very helpful in making this transition happen smoothly. It will almost certainly be after the first of the year before we make the transition, so the City and County are accommodating our employees and allowing them to enroll in their health plans for the year. Once we have a

firm date from CalPERS, we will set a date with the City and County to transition the health coverage.

AB 715

As I previously reported, while we were going through the process earlier this year of selling Natomas Basin Levee Assessment District bonds, SAFCA Bond Counsel pointed out some technical refinements to the SAFCA Act to better reflect the current language that the legal community considers necessary for future bond transactions. These technical refinements were included in AB 715, which was signed into law September 19, 2014. I would like to thank Assemblymember Roger Dickenson for authoring this legislation.

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Attachment(s)