

Agenda of January 29, 2009

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

**FROM: Stein M. Buer, Executive Director  
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**SUBJECT: EXECUTIVE DIRECTOR'S REPORT FOR JANUARY 2009**

**1. Federal Economic Recovery Efforts--Funding the Federal Share of the Natomas Levee Improvement Program**

There is an urgent need for Federal assistance, through the "American Recovery and Reinvestment Act of 2009" (H.R. 598, also known as the Economic Stimulus Bill), in providing the Federal share of project construction costs on the Natomas Levee Improvement Program (NLIP) in the Sacramento, California area.

In 2007, the Sacramento Area Flood Control Agency (SAFCA) secured property owner approval for a new assessment district to fund the local share of the cost of providing the Sacramento Area with a high level of flood protection (200-year or greater) through improvements to Folsom Dam and the levee systems along the Lower American and Sacramento Rivers. As part of this improvement program, SAFCA has developed a multi-phased project to repair and improve the levees protecting the Natomas Basin north of downtown Sacramento. The project would provide at least a 100-year level of flood protection by the end of 2011 and a 200-year level of flood protection within two years thereafter. Although the affected levees were certified by the Federal Government as providing 100-year flood protection as recently as 1998, changes to engineering standards by the U.S. Army Corps of Engineers (Corps) have caused that certification to be withdrawn and have substantially increased the scope of the effort necessary to recertify the levee system.

SAFCA's property-owner approved finance plan assumed that these Natomas Basin improvements could be implemented quickly without initial Federal support through bonds issued by SAFCA under the authority of the new assessment district and by the State of California (State) under the authority of the voter approved Infrastructure Improvement, Smart Growth, Economic Reinvestment and Emergency Preparedness Financing Act of 2006 (Infrastructure Improvement Act). These funds would be used to support the three-year "early implementation project" to recertify the Natomas Basin levee system. Meanwhile, SAFCA and the State would seek Congressional authorization for the Corps to complete the 200-year elements of the project and for the Corps to allow credit to SAFCA and the

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State for work they had accomplished. Such credit would offset future non-Federal contributions to other elements of Sacramento's 200-year flood protection program in exchange for advancing the Federal share of the cost of the "early implementation project" in the Natomas Basin.

It must be pointed out that this "early implementation project" builds on the accomplishments of four prior Federal project authorizations calling for improvements to the levee system protecting the Natomas Basin (1992, 1996, 1999 and 2007). The project is being closely coordinated with the Corps and is being addressed in a General Re-evaluation Report (GRR) currently under preparation by the Corps' Sacramento District. The GRR will provide a vehicle for modifying the currently authorized project. Unfortunately, the GRR is not scheduled for completion until late 2010, when it will be sent to Congress for authorization.

Within months of SAFCA's adoption of this plan, the Corps announced new and more rigorous national standards for managing vegetation and other physical encroachments on Federal project levees. This required SAFCA to overhaul its approach to improving the levee protecting the Natomas Basin along the Lower Sacramento River adding significant cost to the early implementation project. More detailed engineering data on the condition of the levee system also added substantially to the scope of the needed improvements. As a result, the cost of the 100-year early implementation project which SAFCA initially estimated at \$260.0 million has risen to \$580.0 million while the incremental added cost of the follow up 200-year project has fallen from \$154.0 million to \$38.0 million. The Federal share of the cost of the early implementation project that must be paid in advance to keep the project on schedule by the non-Federal interests has risen from \$195.0 million to \$450.0 million. While the benefit/cost ratio of the project remains a robust (5:1), this changed condition exposes the non-Federal interests to unacceptable financial risks given the unprecedented scale of the credits that will be needed to offset the additional costs.

Accordingly, SAFCA and the State have looked carefully at possible ways to facilitate payment of the Federal share of project costs, including the emerging Federal economic stimulus legislation, for opportunities to obtain the Federal cost share. The Natomas Project is well suited to advance the goals of this legislation. Due to SAFCA's sustained planning, environmental review, permitting and design effort, a series of construction contracts covering up to \$400.0 million in levee improvement work can be awarded beginning in March 2009 and throughout 2010. This work will create jobs, alleviate regulatory constraints on economic development, and substantially reduce the risk of a catastrophic loss of life and property due to uncontrolled flooding in an area occupied by 80,000 people and over \$8.0 billion in damageable property. The project design reflects an extraordinary integration of public safety and environmental features, not only protecting lives and property but greatly expanding the emerging Federal wildlife refuge in the Natomas Basin. Finally, project expenditures will be governed by the

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comprehensive cost accounting system established by the State pursuant to the Infrastructure Investment Act.

The January 15, 2009 press release from the House Committee on Appropriations (David Obey, Chairman) summarizing the House version of the American Recovery and Reinvestment Act of 2009 (H.R. 598) currently contains two provisions that offer potential pathways for stimulus funding to reach the Natomas Project.

First, H. R. 598 provides funding for modernizing roads, bridges, transit and waterways, including \$4.5 billion for the Corps to undertake authorized environmental restoration, flood protection, hydropower, and navigation infrastructure improvements critical to the economy. The Corps could use this funding to contribute the Federal share of the cost of the Natomas Project since substantial portions of the project are already authorized. However, due to the above-referenced changes in engineering standards and the resulting increase in the cost of the project, the Corps is constrained from contributing to the project by Section 902 of the Water Resources Development Act of 1986 (Section 902). Moreover, unlike virtually all of the other Federal infrastructure programs identified in H.R. 598, the Corps does not have the authority to expend stimulus funds through direct contributions to non-Federal sponsors for construction activity. Accordingly, the Corps will not be able to participate in the early implementation project unless H.R. 598 is modified to (1) allow funds allocated to the Corps under this account to be expended for construction projects authorized by Congress without regard to the limitations of Section 902, and (2) allow the Corps to expend these funds through direct contributions to non-Federal sponsors for construction activity. The current version of H.R. 598 contains only a limited 902 waiver and does not authorize direct contributions.

H.R. 598 provides a second possible, albeit less traditional, pathway for Federal funding to reach the Natomas project in the allocation for "State Education and Other Budget Priorities." This allocation includes \$79.0 billion in State fiscal relief, including \$39.0 billion to local school districts and public colleges and universities distributed through existing State and Federal formulas; \$15.0 billion to states as bonus grants as a reward for meeting key performance measures; and \$25.0 billion to states for other high priority needs such as public safety and other critical services, which may include education. This language appears to authorize expenditures for flood risk reduction projects. Depending on its other public safety priorities, California's share of this allocation could be directed to the FloodSAFE Program established by the State in connection with the Infrastructure Improvement Act to support improvements to Federal project levees in the Central Valley. However, it is uncertain how much funding might actually be available to the State for this purpose and whether such an expenditure of Federal funds outside the structure of the Corps' Civil Works Program will be permitted under the provisions of the bill.

If these statutory impediments and uncertainties are not addressed and the Federal

share of the cost of the Natomas Project is not provided, the progress of the project will be significantly impeded, the people and property occupying the Natomas Basin will remain exposed to an unacceptably high risk of flooding, and a significant opportunity to advance the economic recovery objectives of the economic stimulus bill will have been missed.

We urge our Congressional delegation to continue their longstanding strong support of flood control solutions in the Sacramento region by seeking modifications to H.R. 598 to allow for direct Corps contributions for the construction of flood control activities, where non-Federal entities are constructing projects in advance of pending Corps reports. We believe that legislation can be prepared that will limit the scope and applicability of such a provision to a very small number of activities. SAFCA and the State have proven to be very progressive, responsible and cost-conscious in advancing critical flood control work. We believe if there's ever been a credible case for advancing the Federal share...with adequate controls and Corps involvement...it is warranted here. We stand ready to respond to questions and provide any additional information that is needed.

## **2. Natomas Levee Improvement Program (NLIP)--Execution Milestones**

Phase 2 of NLIP reached two important milestones on January 21, 2008: The Corps Headquarters issued a Record of Decision (ROD) for Phase 2 of NLIP. In addition, Headquarters granted Section 408 permission for Phase 2. This paves the way for the District Engineer to issue the Final 408 permission for Phase 2, which is contingent upon Corps review and approval of the final plans and specifications for the project (currently underway) and to issue the Section 404 permit for the project. The ROD places two significant financial and cash flow burdens on the project. First, it requires that SAFCA establish a fully funded endowment for long-term maintenance and monitoring of the Brookfield rice fields. Second, it requires that SAFCA post a performance bond or irrevocable standby letter of credit (Performance Security) for the cost of mitigation construction, which must be retained until the Corps has signed off on the as-built drawings. The short-term cost is on the order of \$3.0 million, with most of that amount reimbursable at the end of construction.

Staff has continued close coordination with the Corps regarding opportunities to streamline the Section 408 process, including a very productive meeting with Lieutenant General Van Antwerp, Chief of Engineers, on January 14, 2008. The Corps recognizes the importance of balancing a thorough permitting process with the need to move expeditiously through program execution to realize the public risk reduction and economic benefits of the program, and is committed to expedited processing of the Phase 3 documentation.