DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
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WASHINGTON, D.C. 20314-1000

CECW-PB

AUG 1 1 2008

MEMORANDUM FOR COMMANDER, South Pacific Division (CESPD-DE)

SUBJECT: Implementation Guidance for the Water Resources Development Act of 2007 (WRDA 2007) – Section 3015, CALFED Levee Stability

1. Section 3015 of WRDA 2007 amends Section 103(f)(3) of the Water Supply, Reliability, and Environmental Improvement Act (PL 108-361) to modify the geographic scope where projects may be implemented, clarify the project justification requirements, clarify the definition of the levee design standard, and increase the total authorized cost of the levee stability program. A copy of Section 3015 and the original and amended versions of Section 103(f)(3) are enclosed.

2. Section 103(f)(3) of PL 108-361, as amended by Section 3015 of WRDA 2007, authorizes the Secretary of the Army to undertake the construction and implementation of levee stability programs or projects in the Bay Delta area for such purposes as flood control, ecosystem restoration, water supply, water conveyance, and water quality objectives as outlined in the CALFED Bay-Delta Program Programmatic Record of Decision (August 2000 ROD) and contains specific direction concerning justification of projects and programs. Section 103(f)(3)(D) lists eight separate activities as set out in the following clauses:

(i) reconstruct Delta levees to a base level of protection (also known as the ''Public Law 84–99 standard'') as described in the August 2000 ROD;

(ii) enhance the stability of levees that have particular importance in the system through the Delta Levee Special Improvement Projects Program;

(iii) develop best management practices to control and reverse land subsidence on Delta islands;

(iv) develop a Delta Levee Emergency Management and Response Plan that will enhance the ability of Federal, State, and local agencies to rapidly respond to levee emergencies;

(v) develop a Delta Risk Management Strategy after assessing the consequences of Delta levee failure from floods, seepage, subsidence, and earthquakes;

(vi) reconstruct Delta levees using, to the maximum extent practicable, dredged materials from the Sacramento River, the San Joaquin River, and the San Francisco Bay in reconstructing Delta levees;

(vii) coordinate Delta levee projects with flood management, ecosystem restoration, and levee protection projects of the lower San Joaquin River and lower Mokelumne River floodway improvements and other projects under the Sacramento-San Joaquin Comprehensive Study; and

(viii) evaluate and, if appropriate, rehabilitate the Suisun Marsh levees.

3. The levee improvement projects or programs identified in Section 103(f)(3)(D)(i), (ii), and (viii) should all be approached in the same manner. It is anticipated that the primary purpose of the projects is flood damage reduction, with incidental outputs from ecosystem restoration, water supply, water conveyance, and water quality objectives. Projects will be implemented in two phases: a feasibility phase and a design and implementation phase under a process similar to the implementation of continuing authority projects as described in Appendix F of ER 1105-2-100. These projects require cost sharing with a qualified non-Federal sponsor in accordance with Section 221 of the Flood Control Act of 1970, as amended (42 U.S.C. 1962d-5b). A non-Federal sponsor may include a nonprofit entity with the consent of the affected local government in which the project is located. The non-Federal sponsor must meet the requirements specified in paragraph F-3.h. of Appendix F of ER 1105-2-100.

a. Feasibility Phase.

(1) General. Upon identification of a potential project and appropriation of funds, up to $100,000 will be allocated to a project for the preparation of a Project Management Plan, initiation of the Project Implementation Report (PIR), and negotiation of a Feasibility Cost Sharing Agreement (FCSA), as required. No FCSA is required if the feasibility phase can be completed for $100,000 or less. Any feasibility costs in excess of $100,000 will be shared with the non-Federal sponsor at 50 percent Federal and 50 percent non-Federal pursuant to the terms of a FCSA executed by the District Commander and the non-Federal sponsor. No funds in excess of the $100,000 will be allocated to the project until a FCSA or PPA is executed.

(2) FCSA.

(a) An adaptation of the Continuing Authorities Program (CAP) FSCA reflecting the CALFED authority will be used as a base to draft FCSAs for studies pursuant to this authority. Close coordination should be maintained through the vertical team in development of the initial study specific FCSA. Work will be initiated in HQ on optional language to include in the CAP FCSA to address the CALFED authority. Until the necessary changes to the CAP FCSA are approved, the SPD Commander must forward to the SPD RIT one hardcopy and an electronic copy of a FCSA package containing: a clean copy of the negotiated draft FCSA; a copy of the draft FCSA with the deviations from the model CAP FCSA along with detailed reasons for each deviation; Certificate of Legal Review signed by the District Counsel; current letter of intent from the non-Federal sponsor, and the non-Federal sponsor's signed Self-Certification of Financial Capability for Agreements. All documents requiring signature (Certificate of Legal Review, letter of intent, and the non-Federal sponsor's self-certification of financial capability)

must be scanned so that required signatures are contained in the electronic file. The SPD RIT will coordinate the necessary HQ-level review and HQ will approve the FCSA.

(b) Subsequent to execution of the FCSA, no work may be initiated until the non-Federal sponsor's appropriate proportional share of costs over $100,000 has been made available either in cash or through an agreement on a schedule for an estimated value of in-kind contributions. In accordance with the principles of Section 105(a) of WRDA 86, as amended, the non-Federal sponsor may be afforded credit toward its share of study costs for the value of in-kind contributions performed during the feasibility phase (after execution of the FCSA). Credit afforded is limited to credit for the in-kind contributions that does not result in any reimbursement to the non-Federal sponsor, including consideration of cost incurred by the non-Federal sponsor for participation in the study coordination team and certain audit-related activities (see paragraph F-15.b.(2) of Appendix F of ER 1105 -2-100).

(3) PIR Content. For each project, a PIR should be prepared that identifies at least one alternative plan which is cost effective and complies with all applicable environmental laws, regulations and policies. The desired level of performance for these projects should be the "PL 84-99 standard" as described in the August 2000 ROD, subject to the cost effectiveness test. Minimum requirements for a PIR are: (1) a clear description of the recommended plan; (2) project justification based on demonstrating that overall, the selected plan is cost effective and justified to achieve the desired level of outputs; (3) documentation of status of compliance with appropriate Federal, State, and local environmental and regulatory requirements; (4) a description of the real estate required for the project and a Real Estate Plan, in accordance with Chapter 12 of ER 405-1-12; (5) District Real Estate certification that the non-Federal sponsor has the capability to acquire and provide the required real estate interests; (6) identification of the non-Federal sponsor's anticipated operation, maintenance, repair, replacement, and rehabilitation (OMRR&R) activities, including estimated costs; (7) the non-Federal sponsor's signed Self-Certification of Financial Capability for Reports; (8) the feasibility level Agency Technical Review certification; and (9) District Counsel statement of legal sufficiency for the decision documentation and NEPA compliance. Any waiver for a deviation from policy will be prepared and processed in accordance with the procedures in paragraph F-10.f.(4) of Appendix F of ER 1105-2-100. All PIRs will be evaluated under the criteria of EC 1105-2-408, the 30 March 2007 Director of Civil Works memorandum on the peer review process, and ER 1110-1-12, Quality Management. Note that implementation guidance for WRDA provisions which address peer review and safety assessment review are in the process of being developed. Once that guidance is issued, peer reviews and safety assurance reviews will be applied to projects under this program in accordance with that guidance. The SPD Commander will establish the details of the PIR requirements and format; however, PIRs should provide sufficient decision document level of detail required to support decision making for proceeding into the next phase of the project development..

(4) Alternative Formulation Briefing. The single required milestone in the PIR approval process is an Alternative Formulation Briefing (AFB) that takes place after alternative plans have been formulated and prior to MSC approval for the release of the draft PIR for public review. Additional milestones may be added at the discretion of the SPD Commander. The purpose of the AFB is to ensure that plans have been properly formulated, any legal and policy issues have been identified and resolution has been reached, and SPD concurs with the plan that will likely proceed into the design and implementation phase. The HQ SPD Regional Integration Team (RIT) participation in the AFBs will be limited to PIRs where there are policy or legal issues requiring HQ resolution.

(5) PIR Approval Process. Approval of the PIR will be by letter of the SPD Commander to the District Commander, with a copy furnished to the SPD RIT. The approval letter will certify that the requirements for approving the PIR have been satisfied; summarize the findings, conclusions, and rational for approving the decision document; and certify that the project addressed in the PIR is justified.

b. Design and Implementation Phase.

(1) General. This phase includes all of the activities that would normally be included in the Preconstruction Engineering and Design (PED) and construction phases of specifically authorized projects. The design and implementation phase will be conducted under the provision of a Project Partnership Agreement (PPA) executed by the District Commander and the non-Federal sponsor. All costs incurred for this phase will be shared with the non-Federal sponsor in accordance with the cost sharing requirements of the applicable project purpose. An initial $50,000 will be allotted to the project to pay the Federal costs of negotiating the PPA and initiating design. While these costs are 100% Federally funded prior to the PPA, once the PPA is executed the Federal costs to negotiate the PPA and initiate design will be included in total project costs and shared with the non-Federal sponsor pursuant to the terms of the PPA. No funds in excess of $50,000 will be allotted to a project until the PPA is executed.

(2) Non-Federal Responsibilities.

(a) For structural flood damage reduction projects, the non-Federal sponsor will be responsible for a minimum of 35 percent of total project costs to a maximum of 50 percent of total project costs during the design and implementation phase. In accordance with the terms of the PPA, the non-Federal sponsor must pay 5 percent of total project costs in cash, provide all lands, easements, rights-of-way, relocations, and dredged or excavated material disposal areas required for the project, participate in the Project Coordination Team, perform necessary non-Federal audits, and perform investigations necessary to identify the existence and extent of hazardous substances on all lands, easements, and rights-of-way required for the project. If the value of the non-Federal sponsor's contributions listed above is less than 35 percent of total project costs, the non-Federal sponsor must pay additional cash so that its contributions equal 35

percent of total project costs. Operation, maintenance, repair, rehabilitation, and replacement of the project is a 100% non-Federal responsibility.

(b) The non-Federal sponsor's responsibility for design and implementation costs and OMRR&R for any other project purposes will be determined in accordance with the current cost sharing requirements for that purpose.

(3) PPA.

(a) Since there is no approved model PPA for the CALFED Levee Stability authority, the current approved Section 205 single purpose model PPA should be used as a base to draft PPAs for projects pursuant to this authority that consist solely of flood damage reduction outputs. Close coordination should be maintained through the vertical team in development of the initial project specific design and construction PPA. Work will be initiated in HQ on a model PPA and delegation of approval and execution authority for the CALFED Levee Stability program. Until a model PPA is approved and approval and execution authority is delegated, the SPD Commander must forward to the SPD RIT one hardcopy and an electronic copy of a PPA package containing: a clean copy of the negotiated draft agreement; a copy of the draft agreement with the deviations from the Section 205 single purpose model indicated by redline/strikeout along with detailed reasons for each deviation; Certificate of Legal Review signed by the District Counsel; PPA Checklist (the CAP Checklist should be adapted and used); Federal/non-Federal Funds Allocation Table; and the non-Federal sponsor's signed Self-Certification of Financial Capability for Agreements. All documents requiring signature (PPA checklist, Certificate of Legal Review, and the non-Federal sponsor's self-certification of financial capability) must be scanned so that required signatures are contained in the electronic file. The SPD RIT will coordinate the necessary HQ-level review and obtain approval of the PPA by ASA(CW).

(b) PPAs for projects with costs allocated to other project purposes will require additional language to address the cost sharing of the other project purposes. In this case, contact the SPD RIT for direction on drafting the PPA.

(c) In-Kind Contributions. Section 2003(a)(4) of WRDA 2007 established that a PPA may provide credit toward the non-Federal share of the cost of a project for the value of in-kind contributions provided or performed by non-Federal interests. The guidance and procedures contained in Engineering Circular No. 1165-2-208 In-Kind Contribution Provisions of Section 221 should be used to determine eligibility of credit for such in-kind contributions. The actual value of the in-kind contributions will be determined in accordance with the terms and conditions of the PPA of the project.

(4) Construction. Construction contracts should not be solicited until the District Chief of Real Estate has certified in writing that sufficient real property interests are available to support construction under such contracts. In exceptional circumstances the District Commander may

proceed and issue a solicitation contrary to this general policy after full assessment of the risks and benefits of proceeding, and solicitation documents should advise potential bidders of such facts. However, sufficient real property interests must be available to support implementation under a contract before bids are opened. More detail on limitations on solicitation of contracts and bid openings is provided in paragraphs F-11.e. and f. of Appendix F of ER 1105-2-100.

4. Assistance related to development of best management practices, a Delta Levee Emergency Management and Response Plan, and a Delta Risk Management Strategy, per (iii), (iv) and (v) above, should be conducted in a similar fashion to the Planning Assistance to States Program (Section 22 of WRDA 1974, as amended), and funded at 50 percent Federal, 50 percent non-Federal. Planning Assistance to States sample agreements should be used for these assistance activities. Approval authority for Planning Assistance to States agreements has been previously delegated to the MSC Commanders (Paragraph G-32.b. of Appendix G of ER 1105-2-100). Any subsequent implementation costs should be shared consistent with existing laws and Corps policy.

5. Per (vi) above, planning for any levee stability project should include an evaluation of the practicability of the use of dredged materials from the Sacramento River, San Joaquin River or the San Francisco Bay.

6. Per (vii) above, the Sacramento District should continue to coordinate these Delta levee projects with flood management, ecosystem restoration and other levee protection projects in the Sacramento-San Joaquin Basin, and with state initiatives such as the Bay Delta Conservation Plan, the Delta Risk Management Strategy, the Delta Vision, and the Subventions and Special Projects Program.

7. The District should proceed with work that can be accomplished with existing funds. No additional work should be undertaken under this authority unless additional funds are specifically appropriated for such work. Further, any projects implemented under this authority must be consistent with the future vision for the Sacramento-San Joaquin River Delta.

FOR THE COMMANDER:

Encls

STEVEN L. STOCKTON, P.E.
Director of Civil Works

(b) MODIFICATION.—Section 3 of the Flood Control Act of August 18, 1941 (55 Stat. 642), is amended in the second sentence of subsection (a) in the matter under the heading "LOWER MISSISSIPPI RIVER" by inserting before the period at the end the following: "; except that the Ouachita River Levees, Louisiana, authorized by the first section of the Mississippi River Flood Control Act of May 15, 1928 (45 Stat. 534), shall remain as a component of the Mississippi River and Tributaries Project and afforded operation and maintenance responsibilities as provided under section 3 of that Act (45 Stat. 535)". 33 USC 702a–12.

SEC. 3014. CACHE CREEK BASIN, CALIFORNIA.

(a) IN GENERAL.—The project for flood control, Cache Creek Basin, California, authorized by section 401(a) of the Water Resources Development Act of 1986 (100 Stat. 4112), is modified to direct the Secretary to mitigate the impacts of the new south levee of the Cache Creek settling basin on the storm drainage system of the city of Woodland, including all appurtenant features, erosion control measures, and environmental protection features.

(b) OBJECTIVES.—Mitigation under subsection (a) shall restore the preproject capacity of the city of Woodland to release 1,360 cubic feet per second of water to the Yolo Bypass and shall include—

(1) channel improvements;

(2) an outlet work through the west levee of the Yolo Bypass; and

(3) a new low flow cross channel to handle city and county storm drainage and settling basin flows (1,760 cubic feet per second) when the Yolo Bypass is in a low flow condition.

SEC. 3015. CALFED STABILITY PROGRAM, CALIFORNIA.

(a) AMENDMENTS.—Section 103(f)(3) of the Water Supply, Reliability, and Environmental Improvement Act (118 Stat. 1695–1696) is amended—

(1) in subparagraph (A) by striking "within the Delta (as defined in Cal. Water Code §12220)";

(2) by striking subparagraph (C) and inserting the following:

"(C) JUSTIFICATION.—

"(i) IN GENERAL.—Notwithstanding section 209 of the Flood Control Act of 1970 (42 U.S.C. 1962–2), in carrying out levee stability programs and projects pursuant to this paragraph, the Secretary of the Army may determine that the programs and projects are justified by the benefits of the project purposes described in subparagraph (A), and the programs and projects shall require no additional economic justification if the Secretary of the Army further determines that the programs and projects are cost effective.

"(ii) APPLICABILITY.—Clause (i) shall not apply to any separable element intended to produce benefits that are predominantly unrelated to the project purposes described in subparagraph (A)."; and

(3) in subparagraph (D)(i) by inserting "as described in the Record of Decision" after "Public Law 84–99 standard)".

(b) ADDITIONAL AUTHORIZATION OF APPROPRIATIONS.—In addition to funds made available pursuant to the Water Supply, Reliability, and Environmental Improvement Act (Public Law 108–361) to carry out section 103(f)(3)(D) of that Act (118 Stat. 1696),

there is authorized to be appropriated to carry out projects described in that section $106,000,000, to remain available until expended.

SEC. 3016. COMPTON CREEK, CALIFORNIA.

The project for flood control, Los Angeles Drainage Area, California, authorized by section 101(b) of the Water Resources Development Act of 1990 (104 Stat. 4611), is modified to add environmental restoration and recreation as project purposes.

SEC. 3017. GRAYSON CREEK/MURDERER'S CREEK, CALIFORNIA.

The project for aquatic ecosystem restoration, Grayson Creek/Murderer's Creek, California, being carried out under section 206 of the Water Resources Development Act of 1996 (33 U.S.C. 2330), is modified—

(1) to direct the Secretary to credit, in accordance with section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d–5b), toward the non-Federal share of the cost of the project the cost of work carried out by the non-Federal interest for the project before the date of the partnership agreement for the project; and

(2) to authorize the Secretary to consider national ecosystem restoration benefits in determining the Federal interest in the project.

SEC. 3018. HAMILTON AIRFIELD, CALIFORNIA.

The project for environmental restoration, Hamilton Airfield, California, authorized by section 101(b)(3) of the Water Resources Development Act of 1999 (113 Stat. 279), is modified to direct the Secretary to construct the project substantially in accordance with the report of the Chief of Engineers dated July 19, 2004, at a total cost of $228,100,000, with an estimated Federal cost of $171,100,000 and an estimated non-Federal cost of $57,000,000.

SEC. 3019. JOHN F. BALDWIN SHIP CHANNEL AND STOCKTON SHIP CHANNEL, CALIFORNIA.

The project for navigation, San Francisco to Stockton, California, authorized by section 301 of the River and Harbor Act of 1965 (79 Stat. 1091) is modified—

(1) to provide that the non-Federal share of the cost of the John F. Baldwin Ship Channel and Stockton Ship Channel element of the project may be provided in the form of in-kind services and materials; and

(2) to direct the Secretary to credit, in accordance with section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d–5b), toward the non-Federal share of the cost of such element the cost of planning and design work carried out by the non-Federal interest for such element before the date of an agreement for such planning and design.

SEC. 3020. KAWEAH RIVER, CALIFORNIA.

The project for flood control, Terminus Dam, Kaweah River, California, authorized by section 101(b)(5) of the Water Resources Development Act of 1996 (110 Stat. 3658), is modified to direct the Secretary to credit, in accordance with section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d–5b), toward the non-Federal share of the cost of the project, or provide reimbursement not to exceed $800,000, for the costs of any work carried out by the

and undertake other actions designed to decrease releases from the New Melones Reservoir for meeting water quality standards and flow objectives for which the Central Valley Project has responsibility to assist in meeting allocations to Central Valley Project contractors from the New Melones Project.

(ii) PURPOSE.—The authorization under this subparagraph is solely meant to add flexibility for the Secretary to meet any obligations of the Secretary to the Central Valley Project contractors from the New Melones Project by reducing demand for water dedicated to meeting water quality standards in the San Joaquin River.

(iii) FUNDING.—Of the amounts authorized to be appropriated under section 109, not more than $30,000,000 may be expended to carry out clause (i).

(G) RECIRCULATION OF EXPORT WATER.—Funds may be used to conduct feasibility studies, evaluate, and, if feasible, implement the recirculation of export water to reduce salinity and improve dissolved oxygen in the San Joaquin River.

(2) ENVIRONMENTAL WATER ACCOUNT.—

(A) IN GENERAL.—Of the amounts authorized to be appropriated under section 109, not more than $90,000,000 may be expended for implementation of the Environmental Water Account.

(B) NONREIMBURSABLE FEDERAL EXPENDITURE.—Expenditures under subparagraph (A) shall be considered a nonreimbursable Federal expenditure in recognition of the payments of the contractors of the Central Valley Project to the Restoration Fund created by the Central Valley Project Improvement Act (Title XXXIV of Public Law 102–575; 106 Stat. 4706).

(C) USE OF RESTORATION FUND.—

(i) IN GENERAL.—Of the amounts appropriated for the Restoration Fund for each fiscal year, an amount not to exceed $10,000,000 for any fiscal year may be used to implement the Environmental Water Account to the extent those actions are consistent with the fish and wildlife habitat restoration and improvement purposes of the Central Valley Project Improvement Act.

(ii) ACCOUNTING.—Any such use of the Restoration Fund shall count toward the 33 percent of funds made available to the Restoration Fund that, pursuant to section 3407(a) of the Central Valley Project Improvement Act, are otherwise authorized to be appropriated to the Secretary to carry out paragraphs (4) through (6), (10) through (18), and (20) through (22) of section 3406(b) of that Act.

(iii) FEDERAL FUNDING.—The $10,000,000 limitation on the use of the Restoration Fund for the Environmental Water Account under clause (i) does not limit the appropriate amount of Federal funding for the Environmental Water Account.

(3) LEVEE STABILITY.—

(A) IN GENERAL.—For purposes of implementing the Calfed Bay-Delta Program within the Delta (as defined in Cal. Water Code § 12220)), the Secretary of the Army is authorized to undertake the construction and implementation of levee stability programs or projects for such purposes as flood control, ecosystem restoration, water supply, water conveyance, and water quality objectives.

(B) REPORT.—Not later than 180 days after the date of enactment of this Act, the Secretary of the Army shall submit to the appropriate authorizing and appropriating committees of the Senate and the House of Representatives a report that describes the levee stability reconstruction projects and priorities that will be carried out under this title during each of fiscal years 2005 through 2010.

Applicability.

(C) SMALL FLOOD CONTROL PROJECTS.—Notwithstanding the project purpose, the authority granted under section 205 of the Flood Control Act of 1948 (33 U.S.C. 701s) shall apply to each project authorized under this paragraph.

(D) PROJECTS.—Of the amounts authorized to be appropriated under section 109, not more than $90,000,000 may be expended to—

(i) reconstruct Delta levees to a base level of protection (also known as the "Public Law 84–99 standard");

(ii) enhance the stability of levees that have particular importance in the system through the Delta Levee Special Improvement Projects Program;

(iii) develop best management practices to control and reverse land subsidence on Delta islands;

(iv) develop a Delta Levee Emergency Management and Response Plan that will enhance the ability of Federal, State, and local agencies to rapidly respond to levee emergencies;

(v) develop a Delta Risk Management Strategy after assessing the consequences of Delta levee failure from floods, seepage, subsidence, and earthquakes;

(vi) reconstruct Delta levees using, to the maximum extent practicable, dredged materials from the Sacramento River, the San Joaquin River, and the San Francisco Bay in reconstructing Delta levees;

(vii) coordinate Delta levee projects with flood management, ecosystem restoration, and levee protection projects of the lower San Joaquin River and lower Mokelumne River floodway improvements and other projects under the Sacramento-San Joaquin Comprehensive Study; and

(viii) evaluate and, if appropriate, rehabilitate the Suisun Marsh levees.

(4) PROGRAM MANAGEMENT, OVERSIGHT, AND COORDINATION.—

(A) IN GENERAL.—Of the amounts authorized to be appropriated under section 109, not more than $25,000,000 may be expended by the Secretary or the other heads of Federal agencies, either directly or through grants, contracts, or cooperative agreements with agencies of the State, for—

(i) Program support;

(ii) Program-wide tracking of schedules, finances, and performance;

(iii) multiagency oversight and coordination of Program activities to ensure Program balance and integration;

(iv) development of interagency cross-cut budgets and a comprehensive finance plan to allocate costs in accordance with the beneficiary pays provisions of the Record of Decision;

(v) coordination of public outreach and involvement, including tribal, environmental justice, and public advisory activities in accordance with the Federal Advisory Committee Act (5 U.S.C. App.); and

(vi) development of Annual Reports.

(B) PROGRAM-WIDE ACTIVITIES.—Of the amount referred to in subparagraph (A), not less than 50 percent of the appropriated amount shall be provided to the California Bay-Delta Authority to carry out Program-wide management, oversight, and coordination activities.

SEC. 104. MANAGEMENT.

(a) COORDINATION.—In carrying out the Calfed Bay-Delta Program, the Federal agencies shall coordinate their activities with the State agencies.

(b) PUBLIC PARTICIPATION.—In carrying out the Calfed Bay-Delta Program, the Federal agencies shall cooperate with local and tribal governments and the public through an advisory committee established in accordance with the Federal Advisory Committee Act (5 U.S.C. App.) and other appropriate means, to seek input on Program planning and design, technical assistance, and development of peer review science programs.

(c) SCIENCE.—In carrying out the Calfed Bay-Delta Program, the Federal agencies shall seek to ensure, to the maximum extent practicable, that—

(1) all major aspects of implementing the Program are subjected to credible and objective scientific review; and

(2) major decisions are based upon the best available scientific information.

(d) GOVERNANCE.—

(1) IN GENERAL.—In carrying out the Calfed Bay-Delta Program, the Secretary and the Federal agency heads are authorized to participate as nonvoting members of the California Bay-Delta Authority, as established in the California Bay-Delta Authority Act (Cal. Water Code § 79400 et seq.), to the extent consistent with Federal law, for the full duration of the period the Authority continues to be authorized by State law.

(2) RELATIONSHIP TO FEDERAL LAW AND AGENCIES.—Nothing in this subsection shall preempt or otherwise affect any Federal law or limit the statutory authority of any Federal agency.

(3) CALIFORNIA BAY-DELTA AUTHORITY.—

(A) ADVISORY COMMITTEE.—The California Bay-Delta Authority shall not be considered an advisory committee within the meaning of the Federal Advisory Committee Act (5 U.S.C. App.).

Section 103(f)(3) as amended by Section 3015

Authorization for the CALFED Levee Stability Program is contained in Section 103(f)(3) of the "Water Supply, Reliability, and Environmental Improvement Act" (Public Law 108-361). It is found in Title I which is the "CalFed Bay-Delta Authorization Act." Specifically the authorization is located in Section 103 which is titled "Bay Delta Program", subsection (f), which is titled "Description Of Activities Under New and Expanded Authorizations," and subsection (3) titled "Levee Stability."

As amended by Section 3015(a) of the Water Resources Development Act of 2007, Section 103(f)(3) reads as:

(3) LEVEE STABILITY. –

(A) IN GENERAL. – For purposes of implementing the Calfed Bay-Delta Program, the Secretary of the Army is authorized to undertake the construction and implementation of levee stability programs or projects for such purposes as flood control, ecosystem restoration, water supply, water conveyance, and water quality objectives.

(B) REPORT. – Not later than 180 days after the date of enactment of this Act, the Secretary of the Army shall submit to the appropriate authorizing and appropriating committees of the Senate and the House of Representatives a report that describes the levee stability reconstruction projects and priorities that will be carried out under this title during each of fiscal years 2005 through 2010.

(C) JUSTIFICATION. –

(i) IN GENERAL. – Notwithstanding section 209 of the Flood Control Act of 1970 (42 U.S.C. 1962-2), in carrying out levee stability programs and projects pursuant to this paragraph, the Secretary of the Army may determine that the programs and projects are justified by the benefits of the project purposes described in subparagraph (A), and the programs and projects shall require no additional economic justification if the Secretary of the Army further determines that the programs and projects are cost effective.

(ii) APPLICABILITY. – Clause (i) shall not apply to any separable element intended to produce benefits that are predominantly unrelated to the project purposes described in subparagraph (A).

(D) PROJECTS. – Of the amounts authorized to be appropriated under section 109, not more than $90,000,000 may be expended to—

(i) reconstruct Delta levees to a base level of protection (also known as the ''Public Law 84–99 standard") as described in the Record of Decision;

(ii) enhance the stability of levees that have particular importance in the system through the Delta Levee Special Improvement Projects Program;

(iii) develop best management practices to control and reverse land subsidence on Delta islands;

(iv) develop a Delta Levee Emergency Management and Response Plan that will enhance the ability of Federal, State, and local agencies to rapidly respond to levee emergencies;

(v) develop a Delta Risk Management Strategy after assessing the consequences of Delta levee failure from floods, seepage, subsidence, and earthquakes;

(vi) reconstruct Delta levees using, to the maximum extent practicable, dredged materials from the Sacramento River, the San Joaquin River, and the San Francisco Bay in reconstructing Delta levees;

(vii) coordinate Delta levee projects with flood management, ecosystem restoration, and levee protection projects of the lower San Joaquin River and lower Mokelumne River floodway improvements and other projects under the Sacramento-San Joaquin Comprehensive Study; and

(viii) evaluate and, if appropriate, rehabilitate the Suisun Marsh levees.

In addition, Section 3015 of the WRDA 2007 also provided additional authorization of appropriations. Section 3015(b) of WRDA 2007 states that:

(b) ADDITIONAL AUTHORIZATION OF APPROPRIATIONS. – In. addition to funds made available pursuant to the Water Supply, Reliability, and Environmental Improvement Act (Public Law 108-361) to carry out section 103(f)(3) of that Act (118 Stat. 1696), there is authorized to be appropriated to carry out projects described in that section $106,000,000, to remain available until expended.