

DRAFT

**Small Communities Flood Risk Reduction Program
Guidelines**

**STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES
DIVISION OF FLOOD MANAGEMENT**

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1. PROGRAM DESCRIPTION

The Small Communities Flood Risk Reduction (SCFRR) Program was created as a result of the adoption of the 2012 Central Valley Flood Protection Plan (CVFPP) and is intended to invest in qualifying projects that reduce flood risks for small communities. As specified in the CVFPP, small communities are defined as developed areas with fewer than 10,000 residents, which do not fall in the category of urban. Small communities are required to meet the Federal Emergency Management Agency (FEMA) standard “100-year” level of flood protection (defined as protection from a flood with a 1-in-100 probability of occurrence in any given year) for property located within the flood hazard zone.

The SCFRR Program will support the implementation of flood risk reduction projects for small communities protected by State Plan of Flood Control (SPFC) facilities in the Sacramento-San Joaquin Valley. State funding will help small communities and counties to conduct feasibility studies, and design and construct projects with proven feasibility. The selected projects under the SCFRR Program will first conduct a feasibility study of structural and/or non-structural alternatives for providing 100-year flood protection for small communities. The structural alternatives could lead to the design of projects to repair, rehabilitate, reconstruct, or replace SPFC facilities to improve flood protection.

This document describes applicant and project eligibility requirements; proposal preparation, project selection and collaboration; the submittal and review of the proposals; information regarding what the proposal should contain; required forms; and, interagency agreement requirements.

Supplemental documents will be available to assist the applicants to prepare their applications. These documents include:

- SCFRR Proposal Solicitation Package (PSP);
- *Guidelines for Development of State-Led Feasibility Study*;
- State Systemwide Investment Approach (SSIA) in the CVFPP;
- *Cost Share Guidelines for State-Local Cost Shared Flood Programs and Projects*; and,
- *Draft Central Valley Flood System Conservation Strategy* (and amendments thereto).

2. FUNDING AUTHORITY

The Disaster Preparedness and Flood Prevention Bond Act of 2006 (Proposition 1E; Pub. Resources Code, § 5096.800 et seq.) authorized funding to repair, rehabilitate, reconstruct, or replace levees, weirs, and bypasses to the SPFC facilities. Proposition 1E requires that the funds be expended while (1) securing the maximum feasible amounts of federal and local matching funds; (2) ensuring prudent and cost-effective use of the funds to the extent that doing so does not prohibit timely implementation of disaster preparedness and flood prevention projects; (3) prioritizing the selection of projects to achieve maximum public benefits from the use of the funds; and (4) supporting an investment strategy that meets long-term flood protection needs and minimizes California taxpayer liabilities from flooding.

The Proposition 1E bond funds to be used for the SCFRR Program allow the Department of Water Resources (DWR) to fund projects that evaluate, repair, rehabilitate, reconstruct, or replace levees, weirs, bypasses, and SPFC facilities by all of the following actions:

- Repair erosion sites and remove sediment from channels or bypasses.
- Evaluate and repair levees and any other SPFC facilities.
- Implement mitigation measures for a project by funding participation in a natural community conservation plan, pursuant to Fish and Game Code section 2800 et seq., to facilitate eligible projects.

3. ELIGIBLE APPLICANTS

An applicant must be a local public agency with land use authority within the area(s) protected by the SPFC facilities. The applicant must work collaboratively with the DWR to formulate alternatives to reduce flood risks for small communities by preparing a feasibility study report. The applicant will work closely with the DWR, local regional flood management groups, and reclamation districts to prepare feasibility studies, design, and implement small community projects.

Due to financial limitations, the State will likely not be able to provide 100-year level of flood protection for every small community within the areas protected by SPFC at this time. DWR and the applicant will collaborate to define the project's boundaries, scope of work, and to prioritize the project's actions through development of the feasibility studies.

4. ELIGIBLE PROJECTS

A project is defined as distinct work that is separately identifiable and physically separable from other work and will, on its own or as part of other work, provides flood protection for small communities protected by SPFC facilities.

Eligible projects will initially be limited to project feasibility studies. The feasibility studies will be consistent with the current requirements of the *Guidelines for Development of State-Led Feasibility Study*. An electronic copy of this document is available to download at: http://www.water.ca.gov/funding/program_description.cfm. A feasibility study is an evaluation and analysis of the potential of a proposed project that is based on a sufficient level of investigation, including alternatives analyses, and research to support the process of decision-making toward the preferred alternative including environmental review. These feasibility studies will be used to investigate and recommend solutions to water resources/flood risk reduction deficiencies.

The process will begin with project scoping, continue with a robust alternatives analysis, and then clearly identify a preferred alternative. Each study will incorporate quality engineering, economics, real estate, and environmental analyses, with the goal of ensuring that the feasibility study results in actionable and concise decision documents within a reasonable time frame and cost. The end result of the feasibility study is to identify a preferred alternative. The preferred alternative could also be a non-structural option, including water proofing and raising structures, or purchasing and removing structures from the floodplains. Any purchases of structures, land, or interests in land must be from willing sellers.

Upon completion of the feasibility study, an applicant may apply for SCFRR Program funds for project design and/or implementation of the preferred alternative as identified in the feasibility study. Proposals for design and/or implementation projects (D/I projects) will not be accepted at this time and will be submitted only after the preferred alternative is identified in the completed, DWR-approved feasibility study. Funding for design and implementation will be competitively allocated based on a future PSP. The cost share for these projects will be established in the future PSP based on the outcome of the feasibility studies and funds available for this program. D/I projects are not required to have completed environmental compliance at the time the application is submitted. Implementation projects may be structural or non-structural. Eligible implementation projects include non-structural or structural alternatives which will rehabilitate, reconstruct, or replace SPFC facilities improving the protection of small communities from flood events.

5. ELIGIBLE PROJECT COSTS

Eligible project costs include the reasonable costs of studies, engineering, design, land and easement acquisition, legal fees, preparation of environmental documentation, environmental mitigations, monitoring, and project construction. Reimbursable administrative expenses are the necessary costs incidentally but directly related to the project including the portion of overhead and administrative expenses that are directly related to the projects included in the funding agreement in accordance with the standard accounting practices of the recipient of grant funds. After the execution of the funding agreement, the applicant is referred to as the grantee. Note that only incurred project costs are reimbursed by DWR; no advance payments are permitted. Eligible project costs include those eligible costs incurred after the date an applicant has received a commitment letter from DWR. Eligible costs will only be paid pursuant to an executed funding agreement. Any eligible costs incurred after receipt of a commitment letter, but before execution of the funding agreement are at the sole risk of the applicant.

Costs that are not eligible include:

- A. Operation and maintenance costs;
- B. Routine maintenance;
- C. Purchase of equipment that is not an integral part of the funded project;
- D. Establishing a reserve fund;
- E. Support of existing agency requirements and mandates;
- F. Any costs for work incurred prior to receiving a letter of commitment from DWR;
- G. Payment of principal or interest on existing indebtedness, any interest payments, or costs associated with project financing;
- H. Costs incurred as part of any and all necessary response and cleanup activities required under the Comprehensive Environmental Response, Compensation, and Liability Act; Resource Conservation and Recovery Act; Hazardous Substances Account Act; or, other applicable law;
- I. Duplicate work to obtain new data that the State already had available, unless previously approved by the State or as waived by the State;
- J. Any indirect costs.

“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, but are not limited to: central service costs; general administration of the Grantee; non-project-specific accounting and personnel services

performed within the Grantee 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 Grantee and any subcontract or sub-agreement for work on the funded project that will be reimbursed with grant funds from DWR.

6. PROPOSAL SELECTION PROCESS

According to the DWR's *Cost Share Guidelines for State-Local Cost Shared Flood Programs and Projects*, feasibility studies will be cost shared up to 50 percent by the State. However, for small communities, the State will fund all reasonable and eligible costs needed to complete a feasibility study, up to a maximum of \$500,000 per applicant. Any amounts incurred over \$500,000 shall be cost shared at 50 percent between the applicant and DWR. An electronic copy of this document is available to download at: <http://www.water.ca.gov/floodmgmt/docs/Cost-Share-Guidelines-Final-12-11-14.pdf>

The proposal preparation, review, and prioritization process for applications for feasibility studies will consist of the following steps:

- A. Applicants seeking to improve flood protection for small communities under their jurisdiction may prepare a conceptual proposal for DWR's review and consideration. The proposal should include the following:
 - i. Agency name, authorized representative, physical and email addresses, and phone number.
 - ii. Small community's name that is under the applicant's jurisdiction, population, community map, current flood protection structures, and related project information, including a problem description, and preliminary description of potential project alternatives, schedule, cost, and scope.

This conceptual proposal, including attachments, should not exceed 10 pages.

- B. DWR will review the conceptual proposal and verify its eligibility, as detailed below. If the project is eligible, DWR will meet with the applicant and work with them to refine the scope of work to ensure the proposal's consistency with the *CVFPP State Systemwide Investment Approach* and Proposition 1E's requirements. The applicant's representative and DWR will collaboratively prepare a final scope of work and estimated cost, cost-sharing (if any), and schedule of the feasibility study's completion. The final scope of work will represent the State's interest in investing in the small community flood risk

reduction feasibility study. DWR has a database of updated hydrologic, hydraulic, and geotechnical evaluations, as well as expertise to assist local agencies in formulation and completion of the feasibility study. The implementation of the scope of work may be between DWR and the local public agency; DWR's assistance can save money and reduce the costs of the feasibility study.

As will be outlined in the SCFRR Program PSP, eligibility criteria will be based on the projects' ability to demonstrate that their implementation aids the small community to attain FEMA's 100-year standard level of flood protection through the:

- Full compliance with the existing laws and regulations;
 - Promotion of flood risk management actions that definitively will reduce flood risk to people and property within floodplains protected by the SPFC;
 - Land use planning in the floodplains protected by the SPFC which through the evaluation of potential future development, will not increase the State's liability;
 - Advancement of flood protection for small communities while evaluating and considering multi-benefit projects that integrate other resources' needs (water supply, ecosystem, recreation, open space, effective flood emergency response, protection of State facilities, storage, etc.), as much as possible; and
 - Support for the ability of the flood management system to adapt to changing conditions (hydrologic, climate change, social, political, regulatory, or ecological conditions), where feasible, and its capacity to continue to function and recover quickly after damaging floods.
- C. The applicant will also coordinate with the regional flood management planning group and other interest groups affected by the proposed project. The applicant will need to adopt a resolution authorizing: the submission of the application for funding from the State; that it will comply with all applicable laws and regulations applicable to the funding source; and, identifying the authorized representative of the applicant who may execute the funding agreement and submit all necessary documents. An example of authorizing resolution is provided in Attachment 2.
- D. Once the applicant's project is selected, the applicant must enter into a funding agreement with DWR. The funding agreement is a contract between the

applicant and DWR covering the terms by which the applicant shall work to fund, manage, and complete the project. After execution of a funding agreement, the applicant is referred to as the Grantee. The funding agreement must include an overall work plan, which describes the work to be performed, a detailed budget, a detailed schedule, and reporting requirements. A draft funding agreement template will be available for review with the PSP.

- E. The applicant shall be responsible for complying with the California Environmental Quality Act (CEQA; Pub. Resources Code § 21000 et seq.) and obtaining all necessary permits and approvals for the project.

7. REQUIRED MATERIALS FROM APPLICANTS

Prior to DWR entering into a funding agreement with the local public agency to develop a feasibility study, the local agency must submit the following documents to DWR:

- A. An Applicant Information Form (Appendix 1);
- B. An Authorizing Resolution (Appendix 2);
- C. Table of Contents of their submitted documentation, including a list of appendices;
- D. Project description, including a preliminary scope of work (note the detailed final scope of work developed collaboratively with the State), with schedule and budget (Appendix 3);
- E. Evidence of CEQA compliance (see the PSP);
- F. Attorney’s Certification (Appendix 4); and,
- G. A statement of financial capability of the local agency to secure funds, if cost sharing is required.

8. REQUIREMENTS WHEN SIGNING A FUNDING AGREEMENT WITH THE STATE

8.1 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 grantee may be required by the State to file a Statement of Economic Interests (Fair

Labor Practices Commission Form 700) if it is determined that an individual is a consultant for Political Reform Act purposes.

Applicants 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. Once final awards have been announced by DWR, all proposals are subject to disclosure pursuant to the California Public Records Act. (Gov. Code, § 6250 et seq.)

8.2 Indemnify and Hold Harmless

As part of the funding agreement, applicants shall indemnify and hold harmless the State, its officers, agents, and employees free and harmless from any and all liability from any claims and damages arising from the planning, design, construction, repair, replacement or rehabilitation, maintenance, and operation of the project and any breach of the funding agreement.

8.3 Labor Code Compliance

The grantee will be required to keep informed about and take all measures necessary to ensure compliance with California Labor Code requirements, including, but not limited to, section 1720 et seq. of the Labor Code regarding public works, limitations on use of volunteer labor (Lab. Code, § 1720.4), labor compliance programs (Lab. Code, § 1771.5), and payment of prevailing wages for projects funded with public funds (i.e., grant funds).

9. GUIDELINE AMENDMENTS

Any or all of the eligibility criteria, requirements or procedures specified in these Guidelines may be changed, substituted, or terminated and/or other criteria may be added at the State's discretion. They may also be changed as a result of State legislative actions associated with the passage of the annual State budget or other legislation. Amendments to the Guidelines will be publicly posted and made available for public comment for at least 45 days.

Appendix 1 - Applicant Information

1. Agency Name, Address, Phone Number, email address
2. Provide information about the authorized representative who may sign a funding agreement on behalf of the applicant, including name, title, phone number, and, email address.
3. Location of the proposed feasibility study or repair project, including regional flood management planning area, county, small community, and local maintaining agencies
4. Describe the role of the applicant in regional flood management planning.
5. Does the applicant have a regional flood management plan in place? Is the proposed feasibility study or repair project a priority project within the regional plan?

Appendix 2 – Local Public Agency Authorizing Resolution

Resolution No. _____

A Resolution by the Board of Supervisors of the (Agency Name) Authorizing an Application for funding from the Department of Water Resources and Designating a Representative to Execute the Agreement and any Amendments thereto, for the (Project Name) Project

WHEREAS, the (agency name) is a California Local Public Agency with responsibility for flood management and authority over land use in the area protected by the facilities of the State Plan of Flood Control and is willing to participate in, coordinate, and collaborate with other interested parties that are participating in the development of the (agency name) flood management planning activities;

WHEREAS, the (agency name) is authorized to enter into an agreement with the Department of Water Resources and the State of California;

THEREFORE, BE IT RESOLVED by the Board of Supervisors of the (agency name) as follows:

1. That pursuant and subject to all of the terms and conditions of the Disaster Preparedness and Flood Prevention Bond Act of 2006 (Pub. Resources Code, § 5096.800 et seq.), the (agency name) shall submit an application to obtain funding for the (project name) Project from the Department of Water Resources.
2. That the Board of Supervisors authorize the (title of authorized representative), or designee, to execute the funding agreement with the Department of Water Resources and any amendments thereto.
3. That the (title of authorized representative), or designee, shall prepare the necessary data, make investigations, and take other such actions as necessary and appropriate to obtain funding for the (project name) Project.

CERTIFICATION

I hereby certify that the foregoing Resolution (#) was duly and regularly adopted by the Board of Supervisors of the (agency name) at the meeting held on (date), motion by (member name) and seconded by (member name), motion passed by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Chair, Board of Supervisors

Attest:

Name and Title

Appendix 3 - Project Description

1. This attachment describes the repair project's scope of work, cost estimate, schedule and related information, and will include the following:
 - a. Project name and location;
 - b. Area map(s);
 - c. Estimated costs and schedule;
 - d. Project detailed Scope of Work and any existing related documents; and
 - e. Amount of flood risk reduction anticipated by the project in comparison to current conditions.

2. If the Project is for the development of a Feasibility Study, the Project Description shall also include:
 - a. A proposal of how multiple benefits options will be identified and evaluated within the Feasibility Study; and
 - b. A timeline for early, collaborative planning with resource agencies to discuss any permitting needs.

3. If a Feasibility Study has already been prepared, the Project Description for Implementation Projects (see Section 5) shall also include:
 - a. A summary of the multi-benefit features of the Project(s), if any were possible (examples are ecosystem functions, water supply, recreation, and open space); and
 - b. A description of any early, collaborative planning with resource agencies to identify ecologically important natural resources, so that potential adverse impacts can be avoided or minimized early in the planning process.

4. A detailed explanation of how the Project(s) will not result in growth-inducing impacts or potential increased expected annual flood damages.

Appendix 4 - Attorney's Certification

(The Applicant's attorney shall answer the following questions regarding this proposal and where indicated, shall cite statutory authority or other references.)

- Is the Applicant a political subdivision of the State of California? ()Yes ()No

Citation: _____

- Does the Applicant have legal authority to enter into a Funding Agreement with the State of California? ()Yes ()No

Citation: _____

- What steps are required by law for the Applicant to sign a Funding Agreement with the State?

Citation: _____

- What is the statutory authority under which the Applicant may obtain funds for the purpose, amount, and duration requested?

Citation: _____

- What is the statutory authority under which the Applicant was formed and is authorized to operate?

Citation: _____

- Is the Applicant required to hold an election before entering into a funding contract with the State? ()Yes ()No

Citation: _____

- Will an agreement between the Applicant and the State be subject to review and approval by other governmental agencies? ()Yes ()No

Identify all such agencies: _____

Citation: _____

- Describe any pending litigation that impacts the financial condition of the Applicant or the operation of flood management facilities. If none is pending, so state.

- Does the Applicant have legal authority and jurisdiction to implement a flood control program and the authority to make land use decisions at the Project site and in the protected area?

()Yes ()No

Citation: _____

I certify that I am a duly qualified and licensed attorney in California representing the Applicant Agency and that I have answered the questions on this page and the preceding page to the best of my knowledge.

By _____
(Signature of Applicant Agency's Attorney)

Date _____

(Printed Name of Applicant Agency's Attorney)

(Title) (Bar No.)

(Name of Applicant Agency)