

# Draft Regional Governance Opportunities for Flood Management Agencies

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Upper San Joaquin River

## Regional Flood Management Planning



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Upper San Joaquin River Regional Flood Management Plan



# Introduction

This white paper describes several opportunities for improved regional governance and developing organizational structure so that agencies in the Upper San Joaquin River (USJR) region that have flood management responsibilities can effectively engage in flood risk management, conduct regular operations and maintenance (O&M) activities, and secure consistent needed funding.

The major regional governance frameworks for flood management agencies to consider when evaluating responsibility and jurisdiction of infrastructure O&M include special districts and joint powers authorities (JPAs). The following sections describe these governance frameworks and the required processes. They also outline the benefits and potential associated costs, and provide examples of existing flood agencies that were formed under these governance structures.

## Background

As part of the USJR Regional Flood Management Plan stakeholder outreach process, numerous workshops and interviews were conducted to gain a better understanding of potential issues and challenges in the USJR region regarding flood management responsibilities and challenges. One of the issues identified was the need to develop improved governance structures that would provide sustainable funding. O&M is a critical component of sustaining the design life of flood management infrastructure. However, flood management agencies are challenged with limited funding available for O&M and flood management activities. For example, the Merced Streams Group (MSG) and the Madera County Flood Control and Water Conservation Agency (MCFCWCA) have had challenges securing viable funding and formalizing agency responsibilities for maintaining existing infrastructure as described below.

MSG is a non-binding partnership among the City of Merced, County of Merced, and Merced Irrigation District. Authorized by the Flood Control Act of 1944, the MSG project was constructed as a part of the flood control management system for the San Joaquin River Basin. The MSG project was reauthorized in 1970 as part of the Flood Control Act of 1970 and grew to include construction of three new reservoirs and channel improvements along Bear Creek and Mariposa Creek. MSG is responsible for the O&M of approximately 107 miles of natural channels that convey flood waters across nine creeks in Merced County. Without appropriate funding and without means to acquire needed permits, the MSG project has a lot of deferred maintenance, and O&M is funded by the members of MSG.

MCFCWCA is a special district overseen by Madera County. Founded by California State (State) Legislature in 1969, MCFCWCA oversees construction, operation, and planning of flood control, water supply, drainage, and groundwater recharge projects in Madera County (Madera County 2023). Funding for these efforts is sourced solely from property tax revenue collected by Madera County. However, since 1993, approximately 75% of the tax revenue for MCFCWCA has been transferred to the Education Revenue Augmentation Fund to support local schools. Additionally,

the State abolished the Special District Augmentation Fund, a fund that provided supplemental funding for special districts. As a result, an estimated \$700,000 in tax revenue has been diverted from MCFCWCA annually, severely limiting funding for O&M (San Joaquin River Flood Control Project Agency 2021).

As a result of lack of funding for the MSG and MCFCWCA, O&M within both agencies' jurisdictions has been severely deferred, which exposes the flood management system to potential failure. In the event of infrastructure failure or flooding, MSG's and MCFCWCA's legal and financial damages could be significant, as was the case with MSG flooding in January of 2006. The legal vulnerability of these agencies, and similar agencies in the USJR region, has prompted the need to research formalized governance frameworks that might alleviate liability concerns and recommend organizational structures to address funding challenges.

## Regulatory Oversight of Local Agencies

Typically, a local agency formation commission (LAFCo) regulates the formation and administrative boundaries of cities, counties, and most special districts including all water sector special districts, and oversees any revisions in the geographic boundaries of these entities. LAFCOs do not continue to regulate these entities after their respective formations.

The concept of a LAFCo was established via the Knox-Nisbet Act of 1963 to help oversee and regulate local agency formation and governance (Senate Local Government Committee 2003). There is one LAFCo in each of California's 58 counties.

For example, the Merced County LAFCo charter is to ensure the following (Merced County LAFCo 2002):

- Planned, well-ordered, efficient development patterns
- Governmental services delivered efficiently and effectively
- The need to provide for urban development is balanced with the conservation of open space and prime agricultural lands
- Urban land use patterns maximize the opportunity for local jurisdictions to provide their fair share of regional housing needs for all income levels

## Proposition 218 Process

While LAFCOs regulate the formation of administrative boundaries, Proposition 218 (Prop 218) was enacted in 1996 to regulate adjustments in assessed property fees, one of the primary funding sources for local entities in the water space. Prop 218 compliance is required of public agencies, including cities, counties, and special districts, as well as JPAs. Proposition 218 is an essential process for entities interested in bolstering tax revenue in an existing governance framework, and funds can be used for a variety of services, including O&M. The process can take a minimum of

4 months to complete, and costs associated include the costs for notifying property owners, public hearings, and voting, if applicable (California Stormwater Quality Association 2023).

The Proposition 218 process is required for new or an increased rate in existing tax, assessment, or property-related fee. A tax is defined as a charge on an individual or business to pay for governmental services or facilities that benefits the public. A tax does not need to be proportionally related the benefit experienced by the individual or business. An assessment is a charged levied on a property for public improvements or services that directly benefit the property. A fee is defined as a charge on an individual or business for a governmental facility or service that provides direct benefit to the business or individual.

Depending on the type of charge and if the charge is property-related, the Prop 218 process may include an election vote with a specific vote passing requirement (Table 1). Except for general, non-property related fees, every new or increased existing charge requires an election vote. Due to the complex nature of the Prop 218 process, governmental agencies are encouraged to consult their legal team on the exact requirements for new or increased service charges (LAO 1996).

Table 1. Election Vote Requirements by Type of Charge<sup>1</sup>

Type	Subtype	Vote Needed	Who Votes	Vote Requirement
Taxes	General	Yes	All voters in community or affected area.	Majority
	Special	Yes	All voters in community or affected area.	Two-thirds
Assessments	All	Yes	Property owners (and renters responsible for paying assessments) in affected area.	Majority, weighted in proportion to assessment liability.
Fees	General, no property related	No	N/A	N/A
	Property related	Yes, for any service other than water, sewer, or refuse collection.	Local government may choose: (1) property owners (and renters responsible for paying fee) in affected area, or (2) electorate in the affected area.	Majority of property owners or two-thirds of electorate. Local government may weight ballots in proportion to fee liability.

<sup>1</sup>Table adapted from (LAO 1996)

# Governance Framework Options

There are two primary governance frameworks for flood management agencies in the USJR region to consider when evaluating responsibility and jurisdiction of infrastructure O&M: special districts and JPAs. LAFCos regulate special districts; however, JPAs are not regulated by LAFCos, which allows additional formation and regulatory flexibility. In addition, other types of non-binding agreements may be implemented for conducting O&M.

## Special Districts

Special districts are local governments that are created by members of a community to provide specialized services. California contains 3,300 special districts that can operate in multiple counties and are accountable to their constituents within the boundaries of the special district. These types of services vary based on need, but typically include water service, sewer service, parks, fire protection, and similar. Water-based special districts are usually enterprise districts, meaning constituents are charged a fee for water delivery at a fixed rate approved by the special district board.

There are two principal types of water-based special districts: independent and dependent. Maintenance areas and county service areas are specific types of dependent special districts in California. Table 2 highlights the four types of special districts.

Table 2. Types of Special Districts

Special District Type	Governing Body	Services	Formulation Cost	Legal Responsibilities
Independent	Autonomous board elected by voters	Various	\$26,410–\$213,500+	The independent special district is responsible for all liability
Dependent	Existing governing body	Various	\$26,410–\$213,500+	The dependent special district is responsible for all liability
Maintenance Area	California Department of Water Resources (DWR)	Levee maintenance, flood patrolling, and emergency repairs	N/A (covered by DWR)	DWR is responsible for all liability
County Service Area	County Board of Supervisors	Any services allowable for a county to perform	\$26,410–\$213,500+	County Service Area liability is ambiguous

A benefit of special districts is the ability to receive funding through property-assessed fees while also being eligible for grant funding. However, district oversight must be performed by an external

governing body and can have high formation costs. The following sections detail each type of special district.

### Independent Special District

An independent special district is a government entity established to be directly responsible for a single task or multiple tasks based on a central theme. Overseen by an autonomous board, an independent special district acts as a separate local government. As such, all liability and legal responsibility falls on the independent special district. This type of special district generates revenue through the property fees of inhabitants benefiting from the special district service or services, assessment fees, special taxes, and grant funding.

The process to form an independent special district (and dependent special district) consists of five steps (California Special Districts Association 2016):

1. Application from registered voters to LAFCo, including boundaries and services
2. Review and approval from LAFCo and scheduling of public hearing
3. Protest hearing (a majority protest stops the process) and general vote
4. Election (voters consist only of citizens within proposed boundary)
5. Formal filing and creation of the independent special district

It is important to highlight that the process to create an independent special district is both time-consuming and expensive, with the process taking years from initial application to formal filing and costs ranging from \$26,410 to \$213,500 (California Special Districts Association 2016).

The Merced Irrigation District is an example of an independent special district within the USJR region. Merced Irrigation District, represented by five elected Board Directors, owns and maintains two water storage facilities, over 200 deep irrigation wells, five recreation areas, and is legally authorized to act as an electric utility under the California Water Code (Merced Irrigation District 2023).

### Dependent Special District

Much like an independent special district, a dependent special district is a government entity established to be directly responsible for a single task or multiple tasks based on a central theme. However, a dependent special district is overseen by an existing governing body, such as a city council, county board of supervisors, or other government body. A dependent special district is considered a separate government entity, and as such, is responsible for all liability. Revenue generation, much like independent special districts, is sourced from a combination of property fee, special taxes, assessment fees, and grant funding. The steps required to form a dependent special district and the associated formulation costs are the same as those for an independent special district, detailed in the section above.

The San Joaquin County Flood Control & Water Conservation District is an example of a dependent special district in the USJR region. This district is governed by the County Board of Supervisors and is authorized to form zones in the County to fund construction projects related to flood and water

resources. Funding is provided through the County for the implementation of floodplain management activities (San Joaquin County Flood Control & Water Conservation District 2023).

### Maintenance Area

A maintenance area is formed under the provisions of California Water Code Section 12878 by the Central Valley Flood Protection Board (Sacramento County LAFCo 2016, Central Valley Flood Protection Board 2023). Authorized service of a maintenance area is limited to levee maintenance, flood patrolling, and emergency repairs. The boundaries of a maintenance area include the lands protected from flooding by the levee. Maintenance areas are exempt from LAFCo jurisdiction (Sacramento LAFCo 2016). These types of entities are overseen by DWR and are created when: 1) the local maintaining agency (LMA) determines that it will no longer maintain a unit of a project or 2) when DWR determines that a unit of a project is not being operated in accordance with federal regulations (DWR 2018). While both State Plan of Flood Control (SPFC) and non-SPFC projects can be included in a maintenance area, this governance option is considered to be cost prohibitive for locals as they are required to pay DWR for the estimated cost of O&M improvements to the property pursuant to federal requirements.

The process to form a maintenance area includes the following steps:

1. DWR develops a Statement of Necessary Work which includes documentation that:
  - a. DWR has received either a resolution from an LMA or has determined that current O&M is inadequate
  - b. A description of necessary work
  - c. An O&M budget for the current and following fiscal years
2. DWR transfers the Statement of Necessary Work to the LMA.
3. LMA decides to protest or not protest the Statement of Necessary Work. If the LMA protests within 45 days, a hearing is held to resolve the conflict.
4. DWR forms the maintenance area in the event that there is no further conflict.

Examples of maintenance areas include the DWR Sacramento Yard Maintenance Project Area and the DWR Sutter Yard Maintenance Area. These project areas focus on O&M repairs related to flood maintenance.

### County Service Area

A county service area (CSA) is formed as an extension of a county jurisdiction providing one or more services to unincorporated areas of a county. Overseen by a county board of supervisors, a CSA can provide any services allowed by law and is funded either by direct assessment or through property-related fees for service. CSAs may not directly apply for grant funding as their administration is directly overseen by a county (Senate Local Government Committee 2010). If a CSA wishes to seek grant funding, the overseeing county would be required to apply for grant funding and disburse awarded funds to the CSA.

The process to form a CSA includes the following steps (Senate Local Government Committee 2008):

1. Initiation via a resolution of county board of supervisors or petition with 10% of population of the proposed area.
2. A notice of intention is filed with the LAFCo executive office.
3. Public testimony hearings are held.
4. If a majority protest exists, LAFCo will terminate proceedings.
5. If no majority protest exists, LAFCo will order the formation of the CSA pending voter approval.

An example of a CSA is Merced County's CSA 1. This CSA was formed in August 1966 and was reorganized most recently in 1991. CSA 1 encompasses all unincorporated land in Merced County and primarily provides street lighting and maintenance services, drainage, and parks and landscape maintenance. In addition, CSA 1 is authorized to provide soil conservation and drainage control. CSA1's funding sources include annual assessments on property tax bills of parcels in the CSA (Economic and Planning Systems 2009).

## Joint Powers Authorities

Formation of a JPA may be considered when officials from various public agencies, including federal and State departments, counties, cities, or school districts, establish a specific project or identify a common problem to be addressed. A specific project or common problem may be anything serviceable and allowed by the State Joint Exercise of Power Act of 1973 (Senate Local Government Committee 2007).

A JPA is overseen by the constituent members themselves, meaning that all oversight is conducted internally. Consequently, the amount of oversight that each agency holds in a JPA is agreed upon by the constituent members and approved by the JPA itself. Similarly, liability is jointly shared among all members of the JPA unless specified in the JPA's formation agreement (Senate Local Government Committee 2007). For example, the JPA of the Three Rivers Levee Improvement Authority (TRLIA) specifies that all legal liability is on the JPA entity itself (TRLIA 2015). This means that any single constituent member is not legally responsible for any actions taken on behalf of the JPA and that all legal actions against the JPA are solely on the JPA itself.

There is no cost associated with the creation of a JPA as it is an agreement between and among existing agencies. Similarly, the formation process only requires the signed approval of all proposed members. There is no timeline to achieve this as the process depends on the proposed members. Pending approval from all members, the formation of a JPA can take as little or long time as deemed necessary by all constituent members (Bernstein 2020).

Funding sources for JPAs derive from either the issue of revenue bonds or internal revenue streams. These internal revenue streams come from fees assessed from a completed project or fees assessed on JPA partner agencies. JPAs may directly apply for grants.

Like special districts, JPAs can typically receive funding through property-assessed fees and can be eligible for grants. A benefit of JPAs is entity oversight is provided by the constituent agencies and there are low formation costs.



TRLIA is an example of a JPA established in a rural area of California with a limited population as a revenue source. TRLIA generates revenue by 1) issuing bonds, 2) applying for, accepting, receiving, and disbursing grants, loans, and other assistance from any federal or State agency or any other public agency, 3) investing money in the State treasury, 4) applying for letters of credit to secure bond repayment, and 5) establishing, imposing, and collecting such fees as appropriate (TRLIA 2015).

The San Joaquin Area Flood Control Agency (SJAFC) is a San Joaquin-based JPA that generates revenue using similar sources. However, given the area's larger urban population, 70% of which live in single family homes, a greater proportion of funding comes from assessed property fees. All fees levied annually are special assessments collected specifically within the Flood Protection Restoration Assessment District, a geographic region maintained by SJAFC and formed in 1996 (SJAFC 1995).

## Other Non-Binding Agreements

Although the preceding governance options, special districts and JPAs, are legally established agreements, other types of non-binding agreements may be implemented for conducting and financing O&M. Salinas River Stream Maintenance Program (Salinas River SMP) is a non-binding partnership for conducting O&M activities. The Salinas River SMP is led by Monterey County Water Resources Agency, (MCWRA), Resource Conservation District of Monterey County, and the Salinas River Stream Maintenance Program River Management Unit Association. These organizations hold required O&M permits for stream O&M from USACE, the Central Coast Regional Water Quality Control Board, and California Department of Fish and Wildlife. The Salinas River SMP works with landowners and municipalities along the river for voluntary participation in O&M activities such as vegetation and sediment management (MCWRA 2024).

# Recommendations

Following are recommendations for determining which governance frameworks may be appropriate in the USJR region, and which frameworks might be best for different types of entities.

## Agencies with Non-Binding Agreements

For agencies operating under a non-binding agreement, the arrangement is informal for matters such as O&M and liability. As a result, a JPA should be considered for the following reasons:

- A JPA does not require an extensive formation process or the involvement of a LAFCo. Unlike a special district, a JPA can be formed as quickly as all members agree to the terms of the JPA. Provided the members of the agreement are already established and in good working relation to one another, this process would be streamlined.
- A JPA does not require any external costs associated with its formation compared to special districts which are at least \$25,000 or more. Instead, the only costs incurred by members would be fees associated with formation (legal, administrative, or similar).

- A JPA is overseen by its constituent members, meaning that legal liability could be either shared equally among members or could be solely placed upon the JPA itself, removing constituent members from sole liability. A special district would not provide this level of lateral autonomy for member entities.

## Agencies with Consistent Lack of Funding

For agencies with a consistent lack of funding for O&M, there are a number of options to pursue as described here.

### Form a JPA

Formulation of a JPA would expand funding options by creating another entity through which tax revenue and grant funding can be generated. Additionally, unlike a special district, a JPA does not require an extensive formation process, the involvement of LAFCo, or external costs associated with formation. Additionally, a JPA allows legal liability to be shared equally among JPA members. Moreover, a JPA focuses on a particular geographic area and can provide greater attention to the O&M concerns of a region as opposed to the generally larger or ambiguous jurisdiction of a larger governing entity.

### Increase Local Funding

Increasing local funding through a Proposition 218 election would generate greater revenue for managing O&M expenses. This solution is ideal for entities interested in maintaining an existing governance framework and continuing to act as the principal entity for O&M improvements. However, this solution can take a minimum of 4 months to complete, entails an engineering report to justify cost increases, and requires a majority of voters to approve any increase in assessed fees. This process is not only expensive but difficult as it requires a large amount of outreach and education to convince local voters to approve increases on their own assessed fees.

### Form a State Maintenance Area

Requesting that the State form a State Maintenance Area by relinquishing control of SPFC and/or non-project levees would allow an agency to cede oversight of all or part of O&M to the State. While funding would still be sourced from local beneficiaries, the local agency would no longer need to maintain operational oversight of the facilities, reducing staffing and funding need for O&M of those areas. This option may be considered cost prohibitive for locals as they are required to pay DWR for the estimated cost of O&M improvements on an annual basis.

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