

**Meeting of the Central Valley Flood Protection Board
March 23, 2012**

**Staff Report – Reimbursement for Board Share to
Sacramento Area Flood Control Agency for the
American River Watershed Natomas Features Project**

BOARD ACTION

Consider approval of Resolution No. 2012-01 to:

1. Approve Amendment #1 to Local Project Cooperation Agreement 4600007686, recognizing the increase in Board share obligation to the Sacramento Area Flood Control Agency (SAFCA) on the American River Watershed Natomas Features Project, and increase the agreement's maximum amount in order to allow the Board to reimburse SAFCA for that obligation on the project.
2. Delegate to the Board Executive Officer the authority to execute the amendment in substantially the form attached hereto.

SPONSORS

The American River Watershed (Natomas Features) Project was a project constructed by the Sacramento Area Flood Control Agency (SAFCA), for which the US Army Corps of Engineers (USACE) and the Central Valley Flood Protection Board (Board) are financial cost sharing partners with SAFCA.

LOCATION AND BACKGROUND

The American River Watershed Natomas Features Project (Natomas Project) is located north of Sacramento in the Natomas area, and its construction improved flood control features of Dry, Robla, and Arcade Creeks, and the Natomas East Main Drainage Canal. The result is improved protection for the Natomas basin, north Sacramento, Rio Linda, and Elverta. The project facilities provided at least 1 in 200-year level of flood protection at the time of their construction.

In 1991, the USACE completed a Feasibility Report identifying a project in the Natomas area that included levee improvements, a detention basin, recreation improvements, in conjunction with other improvements in the upper American River watershed.

Due to the uncertain future of Congress authorizing a comprehensive project to control American River flooding, SAFCA's objective was to provide as much flood protection to the Natomas area as possible with its project. In effect, the high level of protection would not prejudice the outcome of the comprehensive American River flood control project alternatives being considered by the USACE at that time. Subsequently in 1992 the U.S. Congress did not approve of the detention basin component of the project, in the upper American River Watershed, at Auburn. The Feasibility Report's improvements, without the detention basin is known as the Natomas Project.

In 1993 the USACE offered assurance of credit or reimbursement from the federal government to SAFCA for work that would begin prior to federal appropriations. In 1995 upon receiving approved permits from The Reclamation Board, SAFCA began construction of its North Area Local Project (Local Project), which was substantially similar to the USACE's Natomas Project. SAFCA's Local Project was substantially completed in 1998. In 1999 the federal government reevaluated its authorized project (the Natomas Project), and entered into an agreement with SAFCA to reimburse 75% of SAFCA's eligible expenditures on the Local Project. Only \$27,280,000 of SAFCA's Local Project expenses were deemed eligible expenses by the USACE as documented in the 1999 Natomas Federal Plan. These improvements were less than 1-in-200 year protection, based on the Feasibility Report recommendations. The following year the State added Section 12670.14 to the California Water Code authorizing State financial participation in the eligible expenses of the Local Project. The result was budget requests in the following few years, and a local project cooperation agreement (LPCA) between the Board and SAFCA in 2003 to reimburse SAFCA \$4,900,000 toward the Board's 70% share of non-federal project costs as determined by the USACE.

In 2005, in accordance with USACE guidance, SAFCA reviewed and expanded the eligible project expenditures to those required to provide 1 in 200-year level of protection to the area. To reimburse SAFCA for outstanding costs from the Natomas Federal Plan, the Board entered into another LPCA with SAFCA in 2007. The maximum amount did not cover the expanded costs. However, the Board also requested an additional budget amount of \$3,740,000 for future reimbursements to SAFCA for the expanded cost share. In a November 4, 2009 letter, the federal government revised the total costs subject to cost sharing for the expanded Natomas project elements up to \$52,043,000, and based their last and final federal contribution to the project on the letter. The USACE reimbursed SAFCA for the federal share of expenses in the amount identified in the following table. In November 2011, the Board and SAFCA each recognized this outstanding obligation due SAFCA and identified a plan to pay out that obligation. The plan includes the Board reimbursing SAFCA up to the proportional federal share paid to date as summarized in the table below.

Today’s proposed Amendment #1 to the LPCA with SAFCA is the authority for the Board to pay its outstanding obligation with SAFCA. A summary of project expenses follows:

Project Expenses subject to Cost Sharing: \$52,043,000			
	Federal	Board	Local
Cost Share of Expenses	\$39,106,000 (~75%)	\$ 9,107,700 (~17.5%)	\$ 3,903,000 (~7.5%)
Total Payments and Credits to SAFCA to date	\$ 39,106,000 (~75%)	\$ 4,900,000 (~9.4%)	
Remaining Cost Share due to SAFCA	\$ 0	\$ 4,207,700	

Currently LPCA Reimbursement Limit	\$496,000
Amendment #1: Requested LPCA Reimbursement Limit	\$ 4,207,700

STAFF RECOMMENDATION

Staff recommends that the board approve Resolution No. 2012-01 to amend the LPCA with SAFCA to increase the maximum amount from \$496,000 to \$4,207,700 to allow the Board to pay its remaining cost share due to SAFCA on this American River Watershed Natomas Features Project.

LIST OF ATTACHMENTS

- A. Resolution 2012-01
- B. LPCA # 4600007686, Amendment #1
- C. Overall Project Timeline

STATE OF CALIFORNIA
THE RESOURCES AGENCY
CENTRAL VALLEY FLOOD PROTECTION BOARD
AMERICAN RIVER WATERSHED (NATOMAS FEATURES) PROJECT
SACRAMENTO AREA FLOOD CONTROL AGENCY REIMBURSEMENT
RESOLUTION 2012-01

WHEREAS, the federal government (United States Corps of Engineers, or "USACE") completed the American River Watershed Investigation in December 1991, which recommended a comprehensive plan to reduce the flood hazard in Sacramento that included levee improvements along the Natomas reach of the American River, Natomas East Main Drainage Canal, the Lower reaches of Arcade, Dry, and Robla Creeks; and

WHEREAS, Section 9159(b) of the Defense Appropriation Act of 1993 ("DM 1993 Section 9159") authorized the Secretary of the Army to construct the "Natomas levee features" of the recommended plan, hereinafter referred to as the "Natomas Project;" and

WHEREAS, in 1995, pursuant to the State of California, The Reclamation Board ("Board") Permit No. 16042 BD the Sacramento Area Flood Control Agency ("SAFCA") initiated construction of the North Area Local Project ("Local Project") before the USACE received appropriations to initiate such construction of the Natomas Project; and

WHEREAS, the Local Project, completed in 1998, reduced the flood hazard in Natomas by implementing levee improvements along the Natomas reach of the American River, Natomas East Main Drainage Canal and the lower reaches of Arcade and Dry Creeks, consistent with the Natomas Project's performance objectives; and

WHEREAS, SAFCA entered into a Memorandum of Agreement (MOA) with the USACE on September 21, 1999, whereby the government credited or reimbursed SAFCA for eligible costs incurred on the Local Project deemed consistent with the performance objective of the Natomas Project; and

WHEREAS, in the MOA, SAFCA assured the USACE that it would assume the responsibility to operate, maintain, repair, replace, and rehabilitate the Local Project; and

WHEREAS, SAFCA and the Board entered into a Local Project Cooperation Agreement (LPCA) No. 4600002871 for reimbursement for the American River Watershed (Natomas Features) Project on or about March 1, 2003; and

WHEREAS, SAFCA and the Board entered into a LPCA No. 4600007686 for additional reimbursement for the American River Watershed (Natomas Features) Project on or about July 13, 2007; and

WHEREAS, the federal government in a November 4, 2009 letter revised the total costs subject to cost sharing for the Natomas project elements, and based their last and final federal contribution to the project on this letter; and

WHEREAS, California Water Code, Section 12670.14(a) specifically authorizes The State of California ("State") participation in the Natomas Project, and California Water Code 12670.16 provides that SAFCA shall be reimbursed pursuant to Water Code section 12585.5 for any costs that SAFCA paid on behalf of the Board for creditable features of the Natomas Project, under stated conditions included in LPCA 4600002871 and LPCA 4600007686; and

WHEREAS, SAFCA incurred planning and construction costs for the Local Project eligible for State credit or reimbursement under Water Code 12670.16; and

WHEREAS, the Board's share of creditable nonfederal project costs reimbursable to SAFCA is currently estimated to be \$9,107,700; and

WHEREAS, to date, the Board agreed to and did reimburse SAFCA for \$4,900,000 of the Board's share of creditable nonfederal project costs, under LPCA 4600002871; and

WHEREAS, the Board's outstanding share of creditable nonfederal project costs is estimated to be \$4,207,700, however the Board is currently limited by LPCA 4600007686 to a maximum payment in the amount of \$496,000 which is the balance owing SAFCA of the initial authorized amount of \$5,396,000; and

WHEREAS, the State legislature appropriated \$4,236,000 in the FY 2006-2007 budget for additional reimbursements to SAFCA, of which \$3,740,000 is presently pending reappropriation in the Department of Water Resources ("DWR") Budget Office; and

WHEREAS, in a November 2011 letter to SAFCA's Executive Director, DWR's Flood Project's Office Chief recognized the outstanding Board share of expenses due SAFCA.

NOW, THEREFORE, BE IT RESOLVED that the Board:

1. Approves Amendment #1 to Local Project Cooperation Agreement 4600007686, recognizing the increase in Board share obligation to the Sacramento Area Flood Control Agency (SAFCA) on the American River Watershed (Natomas Features) Project, and increases the Agreement's

maximum amount in order to allow the Board to reimburse SAFCA for that obligation on the project.

2. Delegates to the Board's Executive Officer the authority to execute the amendment in substantially the form attached hereto.

By: _____ Date: _____
Benjamin F. Carter
President

By: _____ Date: _____
Jane Dolan
Secretary

Approved as to Legal Form and Sufficiency

By: _____ Date: _____
Jeremy Goldberg
Staff Counsel

AMENDMENT NUMBER 1
TO THE
LOCAL PROJECT COOPERATION AGREEMENT
NUMBER 4600007686
BETWEEN
THE STATE OF CALIFORNIA THE RECLAMATION BOARD
AND
THE SACRAMENTO AREA FLOOD CONTROL AGENCY
FOR REIMBURSEMENT FOR THE
AMERICAN RIVER WATERSHED (NATOMAS FEATURES) PROJECT

This Amendment is entered into by and between the State of California Central Valley Flood Protection Board, "CVFPB", hereinafter referred to as the "Board," and Sacramento Area Flood Control Agency, hereinafter referred to as "SAFCA" on the _____ day of _____, 2012 to reimburse SAFCA for the Board's share of the cost of construction of the completed American River Watershed (Natomas Features) Project in view of the following circumstances:

RECITALS

1. The federal government completed the American River Watershed Investigation in December 1991 which recommended a comprehensive plan to reduce the flood hazard in Sacramento that included levee improvements along the Natomas reach of the American River, Natomas East Main Drainage Canal, the Lower reaches of Arcade, Dry, and Robla Creeks; and
2. Section 9159(b) of the Defense Appropriation Act of 1993 ("DM 1993 Section 9159") authorized the Secretary of the Army to construct the "Natomas levee features" of the recommended plan, hereinafter referred to as the "Natomas Project;" and
3. In 1995, pursuant to Board Permit No. 16042 BD, SAFCA initiated construction of the North Area Local Project, hereinafter referred to as the "Local Project," before the United States Army Corps of Engineers ("USACE") received appropriations to initiate such construction of the Natomas Project; and
4. The Local Project, completed in 1998, reduced the flood hazard in Natomas by implementing levee improvements along the Natomas reach of the American River, Natomas East Main Drainage Canal and the lower reaches of Arcade and Dry Creeks, consistent with the Natomas Project's performance objectives; and

5. SAFCA entered into a Memorandum of Agreement (MOA) with the USACE on September 21, 1999, whereby the USACE credited or reimbursed SAFCA for eligible costs incurred on the Local Project deemed consistent with the performance objective of the Natomas Project; and
6. In the MOA, SAFCA assured the USACE that it would assume the responsibility to operate, maintain, repair, replace, and rehabilitate the Local Project; and
7. SAFCA and the Board entered into a Local Project Cooperation Agreement (LPCA) No. 4600002871 for Reimbursement for the American River Watershed (Natomas Features) Project on or about March 1, 2003; and
8. SAFCA and the Board entered into a Local Project Cooperation Agreement No. 4600007686 for additional Reimbursement for the American River Watershed (Natomas Features) Project on or about July 13, 2007; and
9. The federal government in a November 4, 2009 letter revised the total costs subject to cost sharing for the Natomas project elements, and based their last and final federal contribution to the project on this letter; and
10. California Water Code, Section 12670.14(a) specifically authorizes the State of California (“State”) participation in the Natomas Project, and California Water Code 12670.16 provides that SAFCA shall be reimbursed pursuant to Water Code section 12585.5 for any costs that SAFCA paid on behalf of the Board for creditable features of the Natomas Project, under stated conditions included in LPCA 4600002871 and LPCA 4600007686; and
11. SAFCA incurred planning and construction costs for the Local Project eligible for State credit or reimbursement under Water Code 12670.16; and
12. The Board’s share of creditable nonfederal project costs reimbursable to SAFCA is currently estimated to be \$9,107,700; and
13. To date, the Board agreed to and did reimburse SAFCA for \$4,900,000 of the Board’s share of creditable nonfederal project costs, under LPCA 4600002871; and
14. The Board’s outstanding share of creditable nonfederal project costs are estimated to be \$4,207,700, however the Board is currently limited by LPCA 4600007686 to a maximum payment in the amount of \$496,000 which is the balance owing SAFCA of the initial authorized amount of \$5,396,000; and
15. The State legislature appropriated \$4,236,000 in the FY 2006-2007 budget for additional reimbursements to SAFCA, of which, \$3,740,000 is presently pending reappropriation in the Department of Water Resources (“DWR”) Budget Office; and
16. In a November 2011 in a letter to SAFCA’s Executive Director, DWR Flood Project Office Chief recognized the outstanding Board share of expenses due SAFCA.

NOW, THEREFORE, the Board and SAFCA agree to amend the agreement as follows:

1. TITLE AND FIRST PARAGRAPH

Reference to the Reclamation Board represented by its President shall be stricken and replaced with reference to the Central Valley Flood Protection Board represented by its President.

2. RECITAL #12

Reference to “Local Cost-Sharing Agreement (LCSA)” shall be stricken and replaced with “Local Project Cooperation Agreement (LPCA).”

3. RECITAL #13

The figure “\$5,396,000” shall be stricken and replaced with “\$9,107,700.”

4. RECITAL #14

The figure “\$496,000” shall be stricken and replaced with “\$4,236,000.”

5. SECTION I: Obligations of the Board and SAFCA

In Paragraph B the figure “\$496,000” shall be stricken and replaced with “\$4,207,700”

6. SECTION VIII: Notices

SECTION VIII is amended by striking:

“General Manager
The Reclamation Board
3310 El Camino Avenue, Room LL-40
Sacramento, California 95821”

And replacing it with the following:

“Central Valley Flood Protection Board
Executive Officer
3310 El Camino Avenue, Room 151
Sacramento, California 95821”

And also is amended by striking:

“Executive Director
Sacramento Area Flood Control Agency

1007 7th Street, 5th Floor
Sacramento, CA 95814-3407”

And replacing it with the following:

Executive Director
Sacramento Area Flood Control Agency
1007 7th Street, 7th Floor
Sacramento, CA 95814-3407”

- 7. This Amendment shall not be effective until approval by the Department of General Services has occurred.
- 8. All other terms and conditions of the Agreement remain unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment to the Agreement, which shall become effective upon the date it is signed by the authorized representative of the Government.

SACRAMANTO AREA FLOOD
CONTROL AGENCY

THE STATE OF CALIFORNIA
Represented by the Central Valley
Flood Protection Board

BY: _____
Richard M. Johnson,
Executive Director

BY: _____
Benjamin F. Carter, President
Central Valley Flood Protection
Board

DATE: _____

DATE: _____

APPROVED AS TO LEGAL FORM AND SUFFICIENCY

BY: _____
M. Holly Gilchrist
Legal Counsel
Sacramento Area Flood Control
Agency

BY : _____
Jeremy Goldberg
Legal Counsel
California Department of Water Resources

DATE: _____

DATE: _____