

## ADVANCE NOTICE OF INTENT TO FILE EMERGENCY REGULATIONS

The Department of Water Resources (hereinafter the "Department") intends to file an Emergency Rulemaking package with the Office of Administrative Law, to implement DIVISION 6, PART 6, CHAPTER 1, ARTICLE 3, OF THE CALIFORNIA CODE OF REGULATIONS REGARDING FINANCIAL ASSISTANCE FOR FLOOD MANAGEMENT PROJECTS AND SMALL FLOOD MANAGEMENT PROJECTS.

This Notice is sent in accordance with Government Code section 11346.1(a)(2) which requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code Section 11349.6.

As required by subdivisions (a)(2) and (b)(2) of Government Code section 11346.1, this Advance Notice includes the following: (1) the specific language of the proposed emergency regulations; and (2) the Finding of Emergency, including specific facts demonstrating the need for immediate action, the authority and reference citations, the Informative Digest and Policy Statement overview, Form 399 and required determinations.

After the Department files its proposed emergency regulations with the Office of Administrative Law (OAL), OAL will post notice of the filing on the OAL website, <http://www.oal.ca.gov>.

### **SUBMISSION OF COMMENTS**

Comments will be considered if they are submitted no later than five calendar days after the notice is posted on the OAL website. **All comments must be sent simultaneously to both OAL and the Department.**

#### Submission of Comments to OAL

Instructions for sending comments to OAL are available on the OAL website, <http://www.oal.ca.gov>. OAL's mailing address is:

Office of Administrative Law  
300 Capitol Mall, Suite 1250  
Sacramento, CA 95814

#### Submission of Comments to the Department

Comments submitted to the Department may be hand-delivered or mailed to:

Department of Water Resources  
Division of Flood Management  
3310 El Camino Avenue  
Sacramento, CA 95821  
Attention: Michele Ng

Comments may also be submitted by facsimile at (916) 574-0331, or by email to [ngm@water.ca.gov](mailto:ngm@water.ca.gov)

### **SEPARATE RULEMAKING**

Aside from this Advance Notice of Intent to file emergency regulations, the Department has filed a separate proposal for regular (nonemergency) regulations. The emergency and regular regulations follow separate timelines. The nonemergency Notice of Proposed Rulemaking was published in the California Regulatory Notice Register, June 13, 2008, Number 24-Z, pages 931 through 933.

Please note that this Advance Notice of Intent to file emergency regulations does not preclude the public's ability to comment on the proposed regular (nonemergency) regulations. Any interested person or his or her authorized representative may present comments that are relevant to the regular/nonemergency rulemaking.

### **FINDING OF EMERGENCY**

Adoption of the attached proposed emergency regulations is necessary to avoid serious harm to the public peace, health, safety, or general welfare.

The Department of Water Resources is filing these emergency regulations pursuant to Section 13 of Senate Bill No. 85 (Statutes of 2007, Chapter 178, chaptered August 24, 2007). The pertinent language of Senate Bill No. 85 reads:

SEC. 13. Section 5906.954 is added to the Public Resources Code, to read: 5096.954. On or before January 1, 2008, the department shall adopt emergency regulations to implement Section 12585.7 of the Water Code.

Per section 8 of the Legislative Counsel's Digest, the Department "would be required to adopt emergency regulations to implement a specified provision of the Water Code that governs the payment of certain nonfederal costs associated with a federal-state flood control project." Also, section 13 of the Legislative Counsel's Digest states, "The bill would declare that it is to take effect immediately as an urgency statute."

Development and submittal of regulations was delayed until now due to insufficient Department staffing.

The Department is currently in the process of nonemergency rulemaking as described above. As such, the need for emergency rulemaking is temporary until nonemergency rulemaking becomes effective.

**SPECIFIC FACTS DEMONSTRATING THE NEED FOR IMMEDIATE ACTION**

Senate Bill No. 85 (2007) expresses the intent of the Legislature to enact statutory changes to the 2007 Budget Act, and is to be used as a vehicle for statutory implementation for the 2007 Budget.

**AUTHORITY AND REFERENCE**

These regulations are authorized by Water Code sections 12582.7, 12585.7, and 12601. The regulations implement, interpret and make specific Division 6, Part 6, Chapter 1, Article 3, sections 12582.7 and 12585.7 of the Water Code.

## **INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW**

In 2000, the Legislature passed and the Governor signed Assembly Bill No. 1147 (Statutes of 2000, Chapter 1071, chaptered September 30, 2000), a bill that requires the Department to adopt regulations for determining the level of State financial assistance in flood management projects. The regulations establish criteria and a process to determine a project's level of contribution and the recommended State share of costs for flood management projects. These regulations would implement and make specific Water Code section 12585.7, which states five possible objectives for flood management projects to consider in their design. Projects resulting in a significant contribution to any of the stated objectives may receive an increase in State share of costs.

Part 6 of the Water Code gives the Department general authority to provide financial assistance to flood control projects. Water Code section 12582.7 makes federal participation a prerequisite to State financial assistance, and Water Code section 12585.7, for projects authorized after January 1, 2002, establishes State financial assistance at 50 to 70 percent of nonfederal capital costs related to flood control and other purposes, nonfederal capital costs of fish, wildlife, and recreation mitigation, and nonfederal planning, engineering, and design costs. The United States government requires nonfederal (State or local) payment of these costs. The federal requirements are further described in sections 2213, 2215(b), and 2215(c) of the United States Code.

The percentage of State financial assistance in nonfederal costs (State share) is a minimum of 50 percent. It may increase up to 70 percent if the project makes significant contribution to one or more of the five objectives: (1) protection, creation, enhancement, or opportunity for enhancement of endangered species, riparian, aquatic, terrestrial, or other important habitats; (2) protection or enhancement of open space; (3) development or enhancement of designated recreational opportunities, provided the project is sufficiently accessible to the public; (4) increased flood protection for areas with median household income below 120 percent of poverty level; or (5) increased flood protection for State transportation or water supply facilities. The proposed regulations would provide specific criteria for determining the recommendation of the Department or the Central Valley Flood Protection Board as to the State share, based on the project's contribution to any of the objectives. Water Code section 12585.7 requires the Department to develop these criteria by adopting regulations.

Water Code section 12582.7 requires the submittal of a report containing specified information to the Legislature before State authorization of a project. Water Code section 12585.7 requires the report or an addendum to it to include the State recommendation on State share based on substantial evidence in the record. The proposed regulations specify the evidence required and make it a part of the public record by including it in the report to the Legislature.

The proposed regulations include a scope section summarizing the intent of the regulations and a definitions section. There are sections describing Project eligibility, process of determining the State share, the contents of a report to be prepared by the local agency for review, the method and formulas to determine the project's contribution to the objectives, and the method to determine the recommended percentage increase and State share. It also includes a section describing the contents of the report to the Legislature and a section on adjustments to the recommended State share if the project changes substantially.

#### **OTHER MATTERS PRESCRIBED BY STATUTE SPECIFICALLY FOR THIS AGENCY: FEDERAL CONFORMITY**

The proposed regulations deal exclusively with relationships between State government and local government. There is no known existing or comparable federal regulation or statute. The Department finds that these regulations have no conflict with or duplication of federal regulations.

#### **LOCAL MANDATE**

This proposal does not impose a mandate on local agencies or school districts.

#### **FISCAL IMPACT ESTIMATES**

This proposal does not result in a significant statewide adverse economic impact directly affecting businesses, including the ability to compete as defined by Government Code sections 11346.5(a)(7) and (a)(8). This proposal does not impose any costs on any local agency or school district for which reimbursement would be required pursuant to Part 7 (Commencing with Section 17500) of Division 4 of the Government Code. This proposal does not impose other non-discretionary cost savings on local agencies. This proposal does not result in any cost or savings in federal funding to the state.

The purpose of the proposed regulations is to determine the amount of State financial assistance provided to flood management projects, and therefore the regulations will have an impact on costs to local agencies.

Local agencies have the discretion to incorporate any of the five objectives in Water Code section 12585.7(d) for their flood management projects. If a local agency chooses not to incorporate any of the objectives, or if the project does not make a significant contribution to any of the objectives, as determined by the proposed regulation, then the local share of nonfederal costs will be 50 percent. If a local agency chooses to incorporate any of the objectives so that the project makes a significant contribution to the objective(s), as determined by the proposed regulation, then the State may contribute up to an additional 20% and the local share of nonfederal costs will lower proportionately. In order for a project to make a significant contribution to an objective, the total overall project cost (federal and nonfederal) may increase. However, a project may still make a significant contribution to an objective without an increase in cost, as is probable

for the impoverished area and State facilities objectives. Thus, the cost savings to local agencies is between zero and 20 percent of the nonfederal costs.

### **COSTS OR SAVINGS TO STATE AGENCIES**

The statute provides that the State share of authorized flood management projects is 50 percent of the nonfederal cost, plus up to 20 percent additional for significant contribution to any of the specified objectives. The proposed regulations make specific the criteria and process to determine a project's contribution to the objectives. The purpose of these regulations is to determine the amount of State financial assistance to be provided by the Department or the Central Valley Flood Protection Board for a project, and therefore the regulations will have an impact on State costs. The statute that the regulations implement supersedes a previous statutory provision for a fixed State share of 70 percent of the nonfederal costs for flood management projects. The proposed regulations will result either in the same cost to the State as the previous statute or in a savings of up to 20 percent depending on the project's contribution to the objectives.

### **TEXT OF PROPOSAL**

The specific language of the proposed emergency regulations begins on the next page. The text of the proposal may also be viewed and downloaded from the Department's website at <http://www.fcpsubventions.water.ca.gov/>

# **AB1147 Emergency Regulations**

**Proposed Emergency Regulations  
In Title 23, California Code of Regulations, Division 2  
Add Chapter 3.5, Sections 570 through 578 inclusive, to read as follows:**

**CALIFORNIA CODE OF REGULATIONS  
BARCLAY'S OFFICIAL CALIFORNIA CODE OF REGULATIONS**

**Title 23. Waters  
Division 2. Department of Water Resources  
Chapter 3.5. Financial Assistance for Flood Management Projects and  
Small Flood Management Projects**

## **Section 570. Scope**

These emergency regulations implement Public Resources Code Section 5096.954 that requires adopting emergency regulations to implement Water Code Section 12585.7, which became effective on January 1, 2001, by establishing a process for determining the percentage of State financial assistance for flood management projects authorized by the Legislature on or after January 1, 2002.

Note: Authority: Public Resources Code Section 5096.954, Water Code Sections 12585.7, 12585.9 and 12601.

Reference: Water Code Sections 12582.7 and 12585.7.

## **Section 570. Scope**

These regulations implement Water Code Sections 12582.7, 12585.7 and 12585.9, which became effective on January 1, 2001, by establishing a process for determining the percentage of State financial assistance for flood management projects authorized by the Legislature on or after January 1, 2002.

Note: Authority: Water Code Sections 12585.7, 12585.9 and 12601.

Reference: Water Code Sections 12582.7 and 12585.7.

## **Section 571. Definitions**

The following terms used in these regulations have the meanings set forth below:

- (a) “Average family size” means the average family size for a block group. This data can be obtained from the U.S. Census Bureau or other federal, state or local governmental demographics.

- (b) “Benefited area” means the geographical area that is protected by a flood management project.
- (c) “Block” means the smallest subdivision within a census geographic tract. This data can be obtained from the U.S. Census Bureau or other federal, State or local governmental demographics.
- (d) “Block group” means a cluster of blocks within a census geographic tract. The block group is the smallest census unit to have demographic data. This data can be obtained from the U.S. Census Bureau or other federal, State or local governmental demographics.
- (e) "Board" means The Central Valley Flood Protection Board.
- (f) "Department" means the Department of Water Resources.
- (g) "Department or Board" means the Board for projects over which the Board has jurisdiction, and the Department for all other projects.
- (h) "Estimated nonfederal capital cost" means that portion in dollars of the estimated total capital cost of a project determined by the U.S. Army Corps of Engineers or by the Natural Resources Conservation Service to be the financial responsibility of participants other than the United States, usually identified in the federal feasibility study report, final design memorandum or other approved federal project document.
- (i) "Estimated total capital cost" means the total project cost as identified in the final federal feasibility study report, final design memorandum or other approved federal project document. It includes all costs in the federal project subject to cost sharing, such as, construction, planning, engineering and design, construction management, lands, easements, relocations and land disposal and mitigation costs.
- (j) "federal feasibility study report" means the approved decision document used by the U.S. Army Corps of Engineers or by the Natural Resources Conservation Service, that establishes the feasibility for the project, and typically includes an environmental document prepared under the National Environmental Policy Act.
- (k) “Impoverished area" means a benefited area that has a median household income less than 120 percent of the poverty level, for the current or most recent year in which data is available at the time the analysis is performed to determine the recommended state cost share.
- (l) “Median household income” means the median household income for a block group. This data can be obtained from the U.S. Census Bureau or other federal, State or local governmental demographics.
- (m) "Objective" means the feature, character, or quality described in Water Code Sections 12585.7(d)(1) through 12585.7(d)(5).
  - (1) “Habitat objective” means the objective described in Water Code Section 12585.7(d)(1).
  - (2) “Open Space objective” means the objective described in Water Code Section 12585.7(d)(2).
  - (3) “Recreation objective” means the objective described in Water Code Section 12585.7(d)(3).
  - (4) “Impoverished Area objective” means the objective described in Water Code Section 12585.7(d)(4).
  - (5) “State Facilities objective” means the objective described in Water Code Section 12585.7(d)(5).
- (n) “Poverty level” means the monetary income standard that defines whether a family

qualifies as living in a state of poverty. The poverty level is determined by using the U.S. Census Bureau's Poverty Thresholds Chart for the current or most recent year in which data is available, average family size and the median household income, at the time the analysis is performed to determine the recommended state cost share. On the Poverty Threshold Chart, the poverty level is determined by rounding up the value of the average family size, locating that rounded up value on the size of family unit column and locating the corresponding value in the weighted average thresholds column. The corresponding weighted average threshold value is considered to be the poverty level value.

- (o) "Project" means a flood management project receiving financial assistance under Chapter 1 through 4, Part 6, Division 6 of the California Water Code and authorized by the Legislature on or after January 1, 2002, or a small flood management project authorized by Water Code Section 12750 for which the Department of Water Resources has made the findings required by Water Code Section 12750.1 on or after January 1, 2002.
- (p) "Sponsor" means the local public agency or lead local public agency sharing in the nonfederal project cost.
- (q) "Sponsor's nonfederal Cost Sharing Report" is a report prepared by the sponsor to document the sponsor's estimates of the contributions of the project to the objectives of Water Code Sections 12585.7(d)(1) through 12585.7(d)(5). The requirements of this report are described in Sections 574 and 575 of these proposed regulations.
- (r) "State transportation facility" means all facilities for the transportation of passengers and property to and over any toll bridge, tube or other highway crossing and the approaches to each end thereof, acquired or constructed, to be acquired or constructed, or in course of construction. State transportation facility includes terminals, stations, viaducts, rails, tracks, power stations, substations and equipment and power supply lines, storage yards, and the real property, easements, and rights of way upon which any of them are located or situated or which are necessary therefore, and equipment, signals and interlockers, cars and rolling stock, and franchises, rights, and privileges appurtenant thereto.
- (s) "State water supply facility" is a State water supply facility listed in Appendix I, "Water Supply Facilities of the State Water Project."
- (t) "State cost share" means the percentage of the nonfederal costs that the state is required to pay pursuant to Water Code Section 12585.7.
- (u) "Tract" means the census derived geographic subdivisions of a county.

Note: Authority: Water Code Sections 12585.7 and 12601.

Reference: Water Code Sections 12582.7 and 12585.7.

## **Section 572. Process to Determine Project Eligibility**

- (a) As soon as practical, a Sponsor shall notify the Department or Board in writing when it intends to participate in a federal feasibility study that would result in a request for State cost sharing for a flood damage reduction project. The Department will need to be notified for a project that is in the state of California but not on lands along the Sacramento and San Joaquin River and their tributaries and distributaries for which the Board had given assurances to the federal government. Otherwise, the Board will need to be notified for projects on lands along the Sacramento and San Joaquin River and their tributaries and distributaries for which the Board has given assurances to the federal

government or will provide the State cost sharing. Following the notification and throughout the course of the study, the Department or Board staff shall review the initial scoping process, feasibility evaluation, environmental review, and project approval process to inform the Sponsor when the opportunities for including multipurpose objectives in the project have been adequately evaluated. While developing recommendations regarding the State cost share, the Department or Board may consult with the Sponsor, any person or organization, local agencies, and State agencies with an interest in or jurisdiction over any of the objectives of the project.

- (b) The Department or Board shall use the following process to determine project eligibility for State cost-sharing as required by Water Code Section 12582.7(b):
- (1) During the preparation of the federal feasibility report, the Department or Board staff shall attend a site inspection tour of the project arranged by the Sponsor. If the project is past the feasibility phase, then the Sponsor shall arrange for this tour as soon as reasonably possible. The Sponsor shall invite interested local and state agencies, organizations and persons, including the general public, by providing written or other reasonable notifications and publication at least 10 calendar days before the tour. The Sponsor shall give a field and informational tour of the project. This site tour and Department or Board attendance is contingent upon the appropriation of sufficient funds.
  - (2) Within 120 days after the site inspection tour, the Department or Board shall provide the Sponsor with a written preliminary determination of eligibility for State participation and an estimate of the percent of the State cost share.

Note: Authority: Water Code Sections 12585.7 and 12601.

Reference: Water Code Sections 12582.7 and 12585.7.

### **Section 573. Contents of Sponsor's Draft Nonfederal Cost-Sharing Report**

The Sponsor's Draft Nonfederal Cost-Sharing Report shall contain the following substantiating information taken from the federal feasibility study report and other supporting documents:

- (a) A description of the project.
- (b) The project's proposed contribution for each of the multipurpose objectives:
  - (1) For the habitat objective:
    - (A) A narrative description of the elements of the project that contribute to the habitat objective and the types of habitat that are created, protected or enhanced by this project; and
    - (B) The method of calculating the percentage of the estimated nonfederal capital costs that contribute to the habitat objective.
  - (2) For the open space objective:
    - (A) A narrative description of the elements of the project that contribute to the open Space objective; and
    - (B) The method of calculating the percentage of estimated nonfederal capital costs that contribute to the open space objective.

- (3) For the recreation objective:
    - (A) A narrative description of the elements of the project that contribute to the recreation objective;
    - (B) The method used to calculate the accessible and inaccessible areas of project works, and the method of determining any areas withdrawn from public access because such access would constitute a threat to public safety or habitat, or would constitute a trespass on private property; and
    - (C) The method of calculating the percentage of the estimated nonfederal capital costs that contributes to the recreation objective.
  - (4) For the impoverished area objective:
    - (A) A narrative description of the elements of the project that contribute to the impoverished area objective; and
    - (B) The rationale used in determining the project's contribution towards the impoverished area objective.
      - 1. The method used to calculate the project's contribution towards the impoverished area objective. Provide detailed calculations regarding the increased level of flood protection for the benefited area, median household income and poverty level determination.
      - 2. The source documentation used to evaluate the potential contribution, including publication and compilation dates. The latest decennial U.S. Census Bureau data is the Department's preferred choice of data source; however, a Sponsor may elect to use an alternative method that has been certified as equitable by the Department, such as the American Community Survey (starting in 2010). All data that is used for evaluation must be applicable to the same year, originate from reliable sources and have details given down to the census block group level or better.
      - 3. A map of the benefited area clearly showing identified boundaries of flood protection levels and census blocks, block groups and tracts. Blocks chosen for evaluation must lie at least 50 percent within the benefited area.
  - (5) For the state facilities objective:
    - (A) A narrative description of the state water supply and state transportation facilities receiving an increase in flood protection from this project; and
    - (B) The rationale used in determining the project's contribution towards the state water supply and transportation facilities objective.
      - 1. The method used to calculate the project's contribution towards the state facilities objective. Provide specific details regarding flood protection improvement and the effect upon water supply and transportation facilities.
      - 2. A map of the benefited area clearly showing identified boundaries of flood protection levels and state water supply and state transportation facilities.
- (c) The following estimated costs:
- (1) Total capital cost;
  - (2) The nonfederal share of the total capital cost;
  - (3) The nonfederal capital costs of fish, wildlife, and recreation mitigation;
  - (4) The nonfederal planning and engineering costs;
  - (5) The total annual value of the benefit of providing flood protection; and

- (6) The annual cost of the project allocable to flood management when the project increases the level of flood protection for state facilities.
- (d) The Sponsor's estimated share of the capital cost of the project towards each of the five multipurpose objectives (Water Code 12585.7d (1) through d(5)).

Note: Authority: Water Code Sections 12601.

Reference: Water Code Sections 12582.7 and 12585.7.

#### **Section 574. Method to Determine a Significant Contribution of a Project to the Objectives**

- (a) The Sponsor's Draft Nonfederal Cost-Sharing Report will be reviewed by an interdisciplinary Department or Board team comprised of at least three technical experts in the area of flood management and Habitat, Open Space and/ or Recreation. After the technical review, the evaluation team will provide a narrative explanation for the project's total contribution level and the percentages of nonfederal capital costs assigned to each of the multipurpose objectives. The method of calculating the total Recommended State cost share is provided in Section 575.
- (b) The threshold for significant contributions for the Open Space, Habitat and Recreation objectives must be met when a minimum of 5 percent of the nonfederal capital costs are spent for meeting an objective. Nonfederal capital costs spent for meeting an objective cannot be considered as applying towards any other objective.. A project with less than 5 percent of the nonfederal capital costs allocated to Open Space, Habitat, or Recreation objective does not meet the criteria for a significant contribution.
- (c) Significant contributions to both the Impoverished Area and State Facilities objectives must be met when a project with provides a ten percent or greater increase in flood protection to the Impoverished Area and State Facilities.
- (d) The Department or Board team review process will use the following criteria to determine the costs associated with meeting the level of contribution for each of the multipurpose project objectives:
  - 1) Habitat objective. A significant contribution for the Habitat objective requires that at least 5 percent of the project's estimated nonfederal capital costs are contributed towards protecting, creating, enhancing, or providing opportunities for enhancing endangered species, riparian, aquatic, terrestrial, or other important habitats. These habitat improvements must achieve any of the following objectives beyond what is required to mitigate the project's effects on the environment:
    - (A) Promote recovery of at-risk native fish, vegetation or wildlife species;
    - (B) Improve ecological functions of aquatic and/or terrestrial habitats to support sustainable populations of diverse fish, vegetation, and wildlife species;

- (C) Improve conditions for upstream migration, spawning, egg incubation, emergence, rearing and emigration of priority fish species through adjustment of river flows and temperature;
  - (D) Cause increases in early lifestage survival for priority fish species;
  - (E) Improve fish passage through modification or removal of barriers;
  - (F) Influence geomorphic processes within the floodplain in a manner that improves habitat or reduces the potential for fish stranding;
  - (G) Enhance natural processes to support, with minimal human intervention, natural habitats that support native species;
  - (H) Remove and/ or prevent the establishment of non-native species; or
  - (I) Provide other important habitat restoration opportunities.
- (2) Open Space objective. A significant contribution for the Open Space objective requires that at least 5 percent of the project's estimated nonfederal capital costs are contributed towards the acquisition and preservation of agricultural or other undeveloped lands that provide for the conveyance and/ or storage of flood waters, groundwater recharge, recreational, or wildlife habitat use. Such lands may be acquired in fee or in the form of a flowage or other open space easement that secures the rights necessary for the conveyance and/or storage of flood waters. These open space improvements shall achieve any of the following objectives beyond what is required to mitigate the project's effects on the environment:
- (A) Preserve cultural/historical, scenic, agricultural, or habitat values;
  - (B) Serve as a buffer zone between potentially conflicting land uses;
  - (C) Facilitate sediment management;
  - (D) Promote groundwater recharge;
  - (E) Provide a linkage between open space areas; or
  - (F) Provide other important open space attributes.
- (3) Recreation objective. A significant contribution for the Recreation objective requires that at least 5 percent of the project's estimated nonfederal capital costs are contributed towards recreational improvements such as picnic areas, foot and bike paths and provides public access to all or nearly all of the project works, except those areas where public access would constitute a threat to public safety or habitat or would constitute a trespass on private property. These recreation improvements shall achieve any of the following objectives beyond what is required to mitigate the project's effects on the environment:
- (A) Develop and maintain trails for pedestrians, bicycles, and/or equestrians;
  - (B) Modify the operation of flood control facilities to increase the diversity and duration of recreational opportunities;
  - (C) Enhance the condition and quality of existing recreational facilities;
  - (D) Provide facilities for rafting, canoeing, boating, fishing, viewing wildlife, swimming or other water dependent activities;
  - (E) Provide interpretive facilities and services that enhance visitor appreciation of natural, historical, and cultural resources;
  - (F) Relocate major trails to avoid flooding so that they may remain open all year;
  - (G) Enhance public beach areas;

- (H) Provide linkage between recreational areas; or
- (I) Provide other important public recreation opportunities.
- (4) Impoverished Area objective. A significant contribution for the Impoverished Area objective requires that: 1) the benefited area receives a 10 percent increase in flood protection and 2) the benefited area's median household income is less than 120 percent of the poverty level. The increase in flood protection will be determined from the federal Feasibility Study Report. If U.S. Census Bureau website data is chosen, then the following steps will be used to determine if the median household income is less than 120 percent of the poverty level:
  - (A) The benefited area will be evaluated to determine the applicable block groups.
  - (B) For the applicable block groups, the median household income and average family size will be determined.
  - (C) The average family size, rounded up to the next integer, will be used on the latest decennial Poverty Threshold Chart to locate the corresponding poverty level on the chart's weighted average threshold column.
  - (D) The median household income will be compared to 120 percent of the poverty level.

The Sponsor may choose an alternative calculation method for the Impoverished Area objective, such as the American Community Survey (starting in 2010). That method must be certified as acceptable to the Department of Finance prior to any consequent Department evaluations.

- (5) State Facilities objective. A significant contribution for the State Facilities objective requires that State transportation facilities or State water supply facilities receive a 10 percent increase in flood protection. The increase in flood protection will be determined from the federal Feasibility Study Report, or from supplemental information as appropriate.

Note: Authority: Water Code Sections 12585.7 and 12601.

Reference: Water Code Section 12585.7.

### **Section 575. Method for Determining Recommended State Cost Share**

The recommended State cost share is a baseline 50 percent plus the recommended percentage increases for the multipurpose objectives, up to a maximum total of 70 percent, notwithstanding any other provisions stated within the Water Code, Division 6, Part 6, Chapters 1, 2 and 3. The recommended percentage increases will be:

- (a) 0 percent, if the objectives are not met;
- (b) 5 percent for each Habitat, Open Space, or Recreation significant contribution when at least 5 percent and less than 10 percent of the nonfederal capital costs are spent for meeting an objective;
- (c) 10 percent for each, Habitat, Open Space or Recreation significant contribution when the percent of the nonfederal capital costs spent for meeting an objective is at least 10 percent;
- (d) 10 percent for each Impoverished Area or State Facilities objective significant

contribution.

Note: Authority: Water Code Sections 12585.7 and 12601.

Reference: Water Code Section 12585.7.

### **Section 576. Report to the Legislature**

- (a) Once the project is federally authorized, the Sponsor will finalize and submit a Nonfederal Cost Sharing Report to the Department or Board. The Local Sponsoring Agency will notify the Department when a project that does not involve lands along the Sacramento and San Joaquin River and their tributaries and distributaries may be eligible for State financial assistance; and will notify the Board of a project that involves lands along the Sacramento and San Joaquin River and their tributaries and distributaries for which the Board has given assurances to the federal government or will provide the State cost sharing. This report must document the effect of the project's Nonfederal capital contributions to the multipurpose objectives using the methods set forth in Sections 573 and 574, and estimate the cost to the State for the State's share of the Nonfederal capital costs of the project.
- (b) The Department or Board will review the Sponsor's Nonfederal Cost Sharing Report for completeness and accuracy, and, if necessary, return it to the Sponsor for revisions based upon comments and recommendations of the Department or Board. The Department or Board must notify the Sponsor in writing upon determination that the Sponsor's Nonfederal Cost Sharing Report meets the requirements set forth in 12582.7(a).
- (c) Within 30 days of determining that the Sponsor's Nonfederal Cost Sharing Report meets the requirements set forth in 12582.7(a), the Sponsor must circulate the Sponsor's Nonfederal Cost Sharing Report to the Legislature and interested persons and organizations, and will allow written comments for 45 days.
- (d) The Sponsor will submit the following documents to the Department or Board: a Sponsor's Nonfederal Cost Sharing Report, including a response to public comments; and supporting documentation:
  - (1) For each objective, the level of the project's contribution and substantiating data listed in Sections 573 and 574.
  - (2) Team review recommended State cost share approved by the Department or Board.
  - (3) Substantiating data to demonstrate whether the project meets the requirements set forth in Water Code Sections 12582.7(a) and 12585.9 regarding the mitigation of individual or cumulative hydraulic impacts.
  - (4) Supporting documentation including but not limited to Federal Feasibility Report and environmental documents.
- (e) The Department or Board will approve a final recommended State cost share and forward the final Report and supporting documentation to the Legislature.

Note: Authority: Water Code Sections 12582.7, 12585.7, 12585.9 and 12601.

Reference: Water Code Sections 12585.7.

**Section 577. Finality of Authorized State Cost Share; Adjustment**

The State cost share authorized by the Legislature will be the final value, except in the circumstances described below.

- (a) If the Department or Board determines that there has been a substantial change in the project, which would materially alter the scope or function of a project, or the estimated total project cost has changed by 30 percent or more, the contributions to the objectives and the recommended State cost share must be recalculated using the methods described in Section 574 and 575. If the resulting recommended State cost share is different than the previously authorized State cost share, the Department or Board will submit the revised information to the Legislature as an addendum to the report as required by Water Code Subsection 12582.7(b). The addendum must include all the items required in Section 576.
- (b) If the Legislature authorizes a new State cost share that is less than the previously authorized State cost share, then the new State cost share will apply, and the Department and the Board may seek a refund of project reimbursements made or withhold further reimbursements until the revised contribution percentage is achieved.
- (c) If the Legislature authorizes a new State cost share that is more than the previously authorized State cost share, then the new State cost share will apply and the Department or Board must pay additional costs authorized by the Legislature as funds may be available.

Note: Authority: Water Code Sections 12582.7, 12585.7 and 12601.  
Reference: Water Code Sections 12585.7.

**Appendix I**  
**Water Supply Facilities of the State Water Project**

**Part A. Aqueducts of the State Water Project, including joint use facilities:**

<p><u>1. Upper Feather River Division</u>  <u>a. Grizzly Valley Pipeline</u></p> <p><u>2. Oroville Division</u>  <u>a. Thermalito Power Canal</u></p> <p><u>3. North Bay Aqueduct</u>  <u>a. Napa Pipeline</u>  <u>b. Phase II Pipeline</u></p> <p><u>4. South Bay Aqueduct</u>  <u>a. Brushy Creek Pipeline</u>  <u>b. Dyer Canal</u>  <u>c. Altamont Pipeline</u>  <u>d. Livermore Valley Canal</u>  <u>e. Alameda Canal</u>  <u>f. Del Valle Pipeline</u>  <u>g. Del Valle Branch Pipeline</u>  <u>h. La Costa Tunnel</u>  <u>i. Sunol Pipeline</u>  <u>j. Mission Tunnel</u>  <u>k. Santa Clara Pipeline</u></p> <p><u>5. Governor Edmund G. Brown California Aqueduct</u></p> <p><u>6. San Luis Division</u>  <u>a. E.G. Brown California Aqueduct</u>  <u>b. San Luis Canal</u></p> <p><u>6. South San Joaquin Division</u>  <u>a. E.G. Brown California Aqueduct</u></p> <p><u>7. Tehachapi Division</u>  <u>a. Tehachapi Tunnel No. 1</u>  <u>b. Tehachapi Siphon No. 1</u>  <u>c. Tehachapi Tunnel No. 2</u>  <u>d. Pastoria Siphon</u>  <u>e. Tehachapi Tunnel No. 3</u>  <u>f. Carley V. Porter Tunnel</u></p> <p><u>8. Mojave Division</u>  <u>a. Cottonwood Chutes</u>  <u>b. Mojave Siphon</u>  <u>c. Mojave Siphon Second Pipeline</u>  <u>d. Mojave Siphon Powerplant Tunnel</u>  <u>e. East Branch Aqueduct</u></p>	<p><u>9. Santa Ana Division</u>  <u>a. San Bernardino Tunnel</u>  <u>b. Santa Ana Pipeline</u></p> <p><u>10. West Branch</u>  <u>a. Oso Canal</u>  <u>b. Quail Canal</u>  <u>c. Lower Quail Canal</u>  <u>d. Peace Valley Pipeline</u>  <u>e. Gorman Creek Channel Improvements</u>  <u>f. Angeles Tunnel</u></p> <p><u>11. Coastal Branch</u>  <u>a. Coastal Aqueduct</u>  <u>b. Phase I Canal</u>  <u>c. Phase II Pipeline:</u>  <u>A. Reach No. 1 - Devil's Den to Cholame Valley</u>  <u>B. Reach No. 2 - Cholame Valley to Shedd Canyon</u>  <u>C. Reach No. 3 - Shedd Canyon to Calf Canyon</u>  <u>D. Reach No. 4 - Calf Canyon to Cuesta Canyon</u>  <u>E. Cuesta Tunnel</u>  <u>F. Reach No. 5A1 - Cuesta Tunnel to Fiscalini Ranch</u>  <u>G. Reach No. 5A2 - Fiscalini Ranch to Talley Farms</u>  <u>H. Reach No. 5B- Talley Farms to Nipomo</u>  <u>I. Reach No. 6 – Nipomo to Vandenberg Air Force Base</u></p>
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**Part B. Hydroelectric or pumping plants of the State Water Project:**

<p><u>1. Oroville Division</u></p> <p>a. <u>Edward Hyatt Powerplant</u></p> <p>b. <u>Thermalito Powerplant</u></p> <p>c. <u>Thermalito Diversion Dam Powerplant</u></p> <p>d. <u>Sutter-Butte Outlet Powerplant</u></p> <p><u>2. North Bay Aqueduct</u></p> <p>a. <u>Barker Slough Pumping Plant</u></p> <p>b. <u>Cordelia Pumping Plant</u></p> <p><u>3. South Bay Aqueduct</u></p> <p>a. <u>South Bay Pumping Plant</u></p> <p>b. <u>Del Valle Pumping Plant</u></p> <p><u>4. North San Joaquin Division</u></p> <p>a. <u>Harvey O. Banks Delta Pumping Plant</u></p> <p><u>5. San Luis Division</u></p> <p>a. <u>William R. Gianelli Pumping – Generating Plant</u></p> <p>b. <u>Dos Amigos Pumping Plant</u></p> <p><u>6. South San Joaquin Division</u></p> <p>a. <u>Buena Vista Pumping Plant</u></p> <p>b. <u>John R. Teerink Wheeler Ridge Pumping Plant</u></p> <p>c. <u>Ira J. Chrisman Wind Gap Pumping Plant</u></p>	<p><u>7. Tehachapi Division</u></p> <p>a. <u>A.D. Edmonston Pumping Plant</u></p> <p><u>8. Mojave Division</u></p> <p>a. <u>Alamo Powerplant</u></p> <p>b. <u>Pearblossom Pumping Plant</u></p> <p>c. <u>Mojave Siphon Powerplant</u></p> <p><u>9. Santa Ana Division</u></p> <p>a. <u>Devil Canyon Powerplant</u></p> <p><u>10. West Branch</u></p> <p>a. <u>Oso Pumping Plant</u></p> <p>b. <u>William E. Warne Powerplant</u></p> <p>c. <u>Castaic Powerplant</u></p> <p><u>11. Coastal Branch</u></p> <p>a. <u>Las Perillas Pumping Plant</u></p> <p>b. <u>Badger Hill Pumping Plant</u></p> <p>c. <u>Devil’s Den Pumping Plant</u></p> <p>d. <u>Bluestone Pumping Plant</u></p> <p>e. <u>Polonio Pass Pumping Plant</u></p>
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**Part C. Reservoirs or dams of the State Water Project:**

<p><u>1. Upper Feather River Division</u></p> <p>a. <u>Frenchman Dam</u></p> <p>b. <u>Frenchman Lake</u></p> <p>c. <u>Antelope Dam</u></p> <p>d. <u>Antelope Lake</u></p> <p>e. <u>Grizzly Valley Dam</u></p> <p>f. <u>Lake Davis</u></p> <p><u>2. Oroville Division</u></p> <p>a. <u>Oroville Dam</u></p> <p>b. <u>Lake Oroville</u></p> <p>c. <u>Parish Camp Saddle Dam</u></p> <p>d. <u>Bidwell Canyon Saddle Dam</u></p> <p>e. <u>Feather River Fish Barrier Dam</u></p> <p>f. <u>Thermalito Diversion Dam</u></p> <p>g. <u>Thermalito Diversion Pool</u></p>	<p><u>6. San Luis Division</u></p> <p>a. <u>O’Neill Dam</u></p> <p>b. <u>O’Neill Forebay</u></p> <p>c. <u>B.F. Sisk San Luis Dam</u></p> <p>d. <u>San Luis Reservoir</u></p> <p>e. <u>Los Banos Detention Dam</u></p> <p>f. <u>Los Banos Reservoir</u></p> <p>g. <u>Little Panoche Detention Dam</u></p> <p>h. <u>Little Panoche Reservoir</u></p> <p>i. <u>Arroyo Pasajero Impoundment Basin</u></p> <p><u>7. Tehachapi Division</u></p> <p>a. <u>Tehachapi Afterbay</u></p> <p><u>8. Mojave Division</u></p> <p>a. <u>Cedar Springs Dam</u></p>
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<ul style="list-style-type: none"> <li><u>h. Thermalito Forebay Dam</u></li> <li><u>i. Thermalito Forebay</u></li> <li><u>j. Thermalito Afterbay Dam</u></li> <li><u>k. Thermalito Afterbay</u></li> <li>3. <u>North Bay Aqueduct</u> <ul style="list-style-type: none"> <li><u>a. Napa Turnout Reservoir</u></li> <li><u>b. Cordelia Forebay</u></li> </ul> </li> <li>4. <u>South Bay Aqueduct</u> <ul style="list-style-type: none"> <li><u>a. Patterson Reservoir</u></li> <li><u>b. Del Valle Dam</u></li> <li><u>c. Lake Del Valle</u></li> </ul> </li> <li>5. <u>North San Joaquin Division</u> <ul style="list-style-type: none"> <li><u>a. Clifton Court Forebay Dam</u></li> <li><u>b. Clifton Court Forebay</u></li> <li><u>c. Bethany Dams</u></li> <li><u>d. Bethany Reservoir</u></li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li><u>b. Silverwood Lake</u></li> <li>9. <u>Santa Ana Division</u> <ul style="list-style-type: none"> <li><u>a. Devil Canyon Powerplant Afterbay</u></li> <li><u>b. Devil Canyon Powerplant Second Afterbay</u></li> <li><u>c. Perris Dam</u></li> <li><u>d. Lake Perris</u></li> </ul> </li> <li>10. <u>West Branch</u> <ul style="list-style-type: none"> <li><u>a. Quail Lake</u></li> <li><u>b. Pyramid Dam</u></li> <li><u>c. Pyramid Lake</u></li> <li><u>d. Elderberry Forebay</u></li> <li><u>e. Elderberry Forebay Dam</u></li> <li><u>f. Castaic Dam</u></li> <li><u>g. Castaic Lake</u></li> </ul> </li> </ul>
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**Part D. Other water supply facilities of the State Water Project:**

<ul style="list-style-type: none"> <li>1. <u>Oroville Division</u> <ul style="list-style-type: none"> <li><u>a. Oroville Area Control Center</u></li> </ul> </li> <li>2. <u>North Bay Aqueduct</u> <ul style="list-style-type: none"> <li><u>a. Cordelia Surge Tank</u></li> <li><u>b. Creston Surge Tank</u></li> <li><u>c. Travis Surge Tank</u></li> </ul> </li> <li>3. <u>South Bay Aqueduct</u> <ul style="list-style-type: none"> <li><u>a. Santa Clara Terminal Facilities</u></li> </ul> </li> <li>4. <u>North San Joaquin Division</u> <ul style="list-style-type: none"> <li><u>a. Delta Area Control Center</u></li> </ul> </li> <li>5. <u>San Luis Division</u> <ul style="list-style-type: none"> <li><u>a. San Luis Area Control Center</u></li> </ul> </li> <li>6. <u>South San Joaquin Division</u> <ul style="list-style-type: none"> <li><u>a. Kern River Intertie</u></li> <li><u>b. San Joaquin Area Control Center</u></li> </ul> </li> <li>7. <u>Mojave Division</u> <ul style="list-style-type: none"> <li><u>a. First Los Angeles Aqueduct Connection</u></li> <li><u>a. Cedar Springs Dam Maintenance Station</u></li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>8. <u>Santa Ana Division</u> <ul style="list-style-type: none"> <li><u>a. San Bernardino Tunnel Intake Structure</u></li> <li><u>b. Perris Dam Maintenance Station</u></li> </ul> </li> <li>9. <u>West Branch</u> <ul style="list-style-type: none"> <li><u>a. Angeles Tunnel Intake Works</u></li> <li><u>b. Southern California Area Control Center</u></li> </ul> </li> <li>10. <u>East Branch</u> <ul style="list-style-type: none"> <li><u>a. First Los Angeles Aqueduct Connection</u></li> </ul> </li> <li>11. <u>Coastal Branch</u> <ul style="list-style-type: none"> <li><u>a. Tank Site 1 - Polonio Pass</u></li> <li><u>b. Tank Site 2 - Creston</u></li> </ul> </li> </ul>
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