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(Revised)

Bond Funding for Flood Protection And Delta-Related Issues

LEGISLATIVE ANALYST'S OFFICE

Presented To:

Assembly Committee on Water, Parks and Wildlife
Hon. Lois Wolk, Chair





Historical Flood Management Funding

Department of Water Resources

In Millions

Fund Source	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08
General Fund	\$92.4	\$25.0	\$29.2	\$14.9	\$541.3 ^a	\$192.1	\$91.5
State Operations	(19.1)	(17.6)	(14.5)	(14.9)	(524.3)	(43.7)	(78.5)
Local Assistance	(47.7)	(1.1)	(11.0)	—	—	(115.0)	(13.0)
Capital Outlay	(25.6)	(6.3)	(3.6)	—	(17.0)	(33.4)	—
Proposition 13 bond funds	15.6	28.2	14.7	22.5	36.0	3.0	2.5
Proposition 50 bond funds	—	2.3	21.4	21.4	18.8	2.0	—
Proposition 84 bond funds	—	—	—	—	—	—	175.0
Proposition 1E bond funds	—	—	—	—	—	—	422.2
Other funds ^b	12.3	6.9	6.7	6.8	11.6	18.0	34.1
Totals	\$120.3	\$62.4	\$72.0	\$65.6	\$607.7	\$215.1	\$725.3

^a Includes \$500 million from continuous appropriation in Chapter 34, Statutes of 2006 (AB 142, Nuñez).

^b Includes federal funds and reimbursements.

- As can be seen in the figure, not only has the overall level of funding available for flood management varied considerably in recent years, but what has been funded (for example, local assistance versus state operations) and the breakdown of funding sources (for example, General Fund versus bonds) has also varied year to year.



Pre-2006 Flood-Related Bonds Funding History

In Millions

	Total Authorization In Bond for Flood Management	Balance Available ^a
Proposition 204 ^b	\$60.0	—
Proposition 13 ^c	284.5	\$2
Proposition 50 ^d	70.0	—
Totals	\$414.5	\$2

^a Amount available after accounting for prior and proposed appropriations made through 2007-08.
^b Safe, Clean, Reliable Water Supply Fund, 1996.
^c Safe Drinking Water, Clean Water, Watershed Protection, and Flood Protection Fund, 2000.
^d Water Security, Clean Drinking Water, Coastal and Beach Protection Fund, 2002.



Propositions 1E and 84— Flood Management Provisions

In Millions

Bond Program	
Proposition 1E	\$4,090
<ul style="list-style-type: none"> • State Central Valley flood control system repairs and improvements; Delta levee repairs and maintenance. (3,000) • Flood control subventions (local projects outside the Central Valley). (500) • Stormwater flood management (grants for projects outside the Central Valley). (300) • Flood protection corridors and bypasses; floodplain mapping. (290) 	
Proposition 84	\$800^a
<ul style="list-style-type: none"> • State flood control projects—evaluation, system improvements, flood corridor program. (315) • Flood control projects in the Delta. (275) • Local flood control subventions (outside the Central Valley flood control system). (180) • Floodplain mapping and assistance for local land use planning. (30) 	
<p>^a In addition, Proposition 84 provides \$65 million for statewide water planning, including for flood control projects, but also for other water-related needs.</p>	



Governor's 2007-08 Flood Management Budget Proposal

- The *2007-08 Governor's Budget* proposes a total of \$725.3 million for flood management activities in the Department of Water Resources (DWR), of which almost \$600 million is from Propositions 1E and 84 bond funds.

This total includes the following:

- The budget proposes \$462.6 million in Propositions 1E and 84 bond funds for flood management state operations and local assistance. Most of these funds are for local assistance, including flood control subventions, and grants for projects to improve flood protection in urban Central Valley areas and Delta levee maintenance and improvement.
- The budget also includes \$135.2 million in Proposition 1E bond funds as well as \$11.9 million in reimbursements for flood management-related capital outlay projects in the Central Valley.
- The department is in the third year of a three-year budget plan to improve flood management-related state operations. The budget proposes *increases* of \$3 million in one-time funds and \$9.5 million in ongoing funds (mainly General Fund) for this purpose.



Spending From the AB 142 Appropriation

- The Legislature appropriated \$500 million from the General Fund in 2006 legislation (Chapter 34, Statutes of 2006 [AB 142, Núñez]) to evaluate, repair, and improve the flood control system. We find that the legislatively required quarterly reports on spending from this appropriation have been late and lacking details, making evaluation of the expenditures difficult.
- The budget proposes to use \$200 million of Proposition 1E bond funds to pay back the General Fund for AB 142 expenditures incurred *prior* to the bond's passage. The payback proposal may raise legal issues, and the amount proposed seems high given that only \$164.7 million was spent through November 2006, as shown in the figure below.

AB 142 Spending Through November 30, 2006 *In Millions*

Activity	Cash-Out-the-Door Expenditures	Contract Commitments (Encumbered Funds)
Emergency levee erosion repair project	\$146.7	\$45.0
Federal levee rehabilitation assistance	13.7	1.5
American River Common Features	2.1	—
Levee evaluation programs	0.1	35.0
Flood maintenance	2.1	—
Flood fight materials	—	0.8
Totals	\$164.7	\$82.3



Spending From the AB 142 Appropriation

(Continued)

- As an alternative to the Governor's "payback" proposal, the Legislature could create General Fund savings by reverting the unspent funds from the AB 142 appropriation (\$335 million) to the General Fund, and using Proposition 1E bond funds as a replacement funding source.
- We recommend holding joint policy and budget oversight hearings on AB 142 spending, possibly in conjunction with overall flood management hearings, to increase legislative oversight.



Flood Management: Issues for Legislative Consideration

- In our *Analysis of the 2007-08 Budget Bill*, we recommended a number of legislative actions to provide for the effective and timely implementation of Propositions 1E and 84 bond programs, consistent with legislative priorities. Our recommendations that are relevant to the flood management provisions of these bonds are summarized below:

Recommendations to Improve Propositions 1E and 84 Implementation

- ✓ **Defining Funding Eligibility**
 - Define project funding eligibility for flood control programs.
- ✓ **Establishing State-Local Cost Sharing**
 - Establish local matching requirement, along with any exemptions, for all flood control programs funded from the two bonds.
- ✓ **Being Advised of Federal Funding**
 - Request administration to advise Legislature at budget hearings of anticipated federal funding for flood control.
- ✓ **Considering Streamlining Measures to Improve Project Delivery**
 - Request administration to advise Legislature of statutory action that could be taken to improve timeliness of project delivery.
- ✓ **Appropriating Bond Funds**
 - Appropriate all funds through budget bill, including “in-lieu” of continuously appropriated funds.
- ✓ **Oversight of Capital Outlay Spending**
 - Require semi-annual reporting of capital outlay expenditures.
 - Establish process for independent review and oversight of capital outlay project management.
- ✓ **Additional Oversight Measures**
 - Ensure, during course of budget review, that bond funds are proposed for capital purposes, as defined in the Government Code.
 - Require reporting of bond fund condition information in Governor’s budget.
 - Hold joint legislative hearings on bond implementation.



Flood Management: Issues for Legislative Consideration *(Continued)*



Defining Funding Eligibility—Where Will the Money Go?

- Propositions 1E and 84 together provide \$4.9 billion for flood control projects and programs. Both of these measures provide funding for a very broad array of projects and programs, leaving considerable discretion to the administration as the particular flood management activities funded by bonds.
- For example, Proposition 1E provides \$3 billion for repairs and improvements to the state Central Valley flood control system and for Delta levee repairs and maintenance, without specifying the funding allocation between these two broad purposes.
- We recommend the enactment of legislation for each of the bonds establishing the Legislature's priorities for allocating funds for flood management activities.
- We also recommend that the Legislature include as a priority expenditures that serve to reduce the state's potential fiscal liability stemming from flood events. (Recent court decisions, including the decision in *Paterno v. State of California*, expose the state to such liability.)



Establishing State-Local Cost Sharing—Are Existing Requirements Sufficient and Appropriate?

- With specified exceptions, there is no local matching requirement (either in the bond measure or elsewhere in statute) for much of the flood management funding in Propositions 1E and 84. (The exceptions are funds spent on: [1] federally authorized flood control projects, [2] the Delta levees subvention program, and [3] the \$300 million stormwater flood management grant program [Proposition 1E].)



Flood Management: Issues for Legislative Consideration *(Continued)*

- The Governor's budget proposes close to \$250 million of flood control expenditures in 2007-08 without a mandatory local matching requirement. While DWR has indicated that it will seek a voluntary local match for these expenditures, it does not plan on requiring it.
- We recommend the enactment of legislation that establishes a local matching requirement, along with any exemptions, for flood control programs funded from the two bonds.
- The Legislature should consider whether any existing cost-sharing requirements in law that would otherwise apply to projects continue to be appropriate.



Being Advised of Federal Funding Uncertainty— Will the State “Go Alone?”

- For federally authorized flood control projects with a federal-state-local cost share, the state has traditionally secured the federal funding contribution before making expenditures. Because of the not-before-seen magnitude of state bond funds for flood control projects, it is unlikely that the state will have secured a federal funding commitment in all cases before a project expenditure triggers a federal cost share.
- We recommend the Legislature be advised by DWR during the course of budget and policy hearings of the potential for federal matching funds, the administration's efforts to seek these funds, and the reasonable likely amount and timing of the federal funding.



Flood Management: Issues for Legislative Consideration *(Continued)*



Structure Needed for Capital Outlay Project Management— How Will the Department Move Forward Without the Federal Role?

- The department has had few direct flood management capital outlay projects that did not also include partnering with the federal government as the lead agency. This partnering provided independent management oversight for capital outlay projects, through processes established by the Army Corps of Engineers.
- The department has indicated the Reclamation Board could (by default) provide project management oversight. However, we note that DWR currently staffs the board and therefore the current board structure may not provide needed independence in a review/oversight capacity. Legislation has been introduced this session to establish some independence—SB 17, Florez.
- We recommend the department report at budget hearings on its plan to provide independent review and oversight of its flood management capital outlay projects. We also recommend the establishment of regular reporting, as other departments are required to do, to provide the Legislature with timely and up-to-date information on capital outlay expenditures and the status of capital projects.



Flood Management: Issues for Legislative Consideration *(Continued)*



Additional Oversight Measures

- ***Legislative Appropriations Versus Continuous Appropriations.*** The majority of the flood management funds allocated in Proposition 84 and all of the Proposition 1E funds are available for expenditure only upon appropriation by the Legislature. (While the Legislature typically appropriates such bond funds in the budget act, it can also appropriate funds in a separate bill.) However, there are certain provisions in Proposition 84 for which the funding is continuously appropriated, including funding for: floodplain mapping (\$30 million) and for various state flood control projects (\$275 million). We note, however, that a continuous appropriation of funding in a bond measure does not preclude the Legislature from including these funds in the annual budget act “in lieu” of the continuous appropriation as a way of increasing legislative oversight of the expenditure of these funds. We recommend that the Legislature make such appropriations in the budget act.
- ***Ensuring That Bond Funds Are Used for Capital Purposes.*** Current law (Section 16727 of the Government Code) essentially provides that general obligation bonds are to be used for capital purposes. Without this control, the door would be opened to debt financing of noncapital expenditures, such as the costs of day-to-day program operations. In order to ensure that bond funds are not proposed for purposes that are clearly not related to capital outlay, we recommend that the Legislature review the Governor’s bond-funded flood management budget proposals with the Government Code provision in mind.



CALFED Bay-Delta Program Bond Issues

CALFED Budget Proposal. The *2007-08 Governor's Budget* proposes \$473.6 million in state funds across eight state agencies for the CALFED Bay-Delta Program. The majority of the funding (86 percent) is proposed to come from bond funds, mainly from Proposition 50 (\$222.6 million) and Proposition 84 (\$148.3 million). Program areas receiving the most funding are ecosystem restoration and drinking water quality.

Concerns With Budget Proposals. In our *Analysis of the 2007-08 Budget Bill*, we raised a number of issues pertaining to particular bond-funded proposals under the CALFED Bay-Delta Program. Some of our concerns relate to budget proposals that we find deviate from the "beneficiary pays" funding principle that is endorsed by the CALFED Record of Decision and numerous statements of legislative intent. These issues include:

- Surface Storage Proposals Need Matching Funds**
 - This issue was discussed at the committee's March 6 hearing.

- Conservation Planning Effort Benefiting Delta Water Exporters Should Be Funded by Them, Rather Than Bond Funds**
 - The Governor's budget proposes \$1.7 million in Proposition 84 funds in the budget year (out of a total of \$20 million proposed over the next several years) to begin planning for and implementing a Natural Communities Conservation Plan (NCCP) for the Bay-Delta region. An NCCP is a regulatory tool used to plan for future development while protecting natural resources and endangered species; such plans allow species and ecosystems to be protected in advance, in return for granting project proponents a measure of certainty over future regulatory requirements. An NCCP in the Delta region would allow Delta water exporters to "take" endangered species while moving water through the Delta. When the concept of a Bay-Delta NCCP was first proposed, the administration indicated that water users would pay for it, since they are the primary beneficiaries. While water users have provided



CALFED Bay-Delta Program Bond Issues

(Continued)

\$6 million to begin this effort, the administration now proposes to use Proposition 84 bond funds to pay for the continued development of the NCCP. We recommend against using Proposition 84 bond funds for this purpose and recommend instead that water users benefiting from it be required to pay for it.



South Delta Improvements Program Proposal Premature

- The budget proposes \$31.4 million in Propositions 40 and 50 bond funds for final design, staff support, and construction costs for the South Delta Improvements Program (SDIP). The objectives of SDIP are to improve water supply reliability for the State Water Project (SWP) through project capital improvements, and to increase SWP's capacity to make water deliveries.
- We find that the proposal is premature because:
 - Cost-sharing agreements with the federal government and SWP contractors who benefit directly from the program have not been secured.
 - The federal Fish and Wildlife Service has recently put on hold its permitting for SDIP, creating uncertainty about whether the program can proceed.