

Staff Report 47

PARTIES:

California State Lands Commission; Department of Water Resources; Central Valley Flood Protection Board

PROPOSED ACTION:

Enter into a Memorandum of Understanding for the use of State Lands for State Plan of Flood Control Facilities.

BACKGROUND:

The American River Common Features 2016 Flood Risk Management Project (ARCF) is a comprehensive, multi-agency effort to reduce flood risk and address erosion, seepage, and levee stability along the American and Sacramento Rivers in the greater Sacramento region. The project is jointly led by the U.S. Army Corps of Engineers (USACE), the Sacramento Area Flood Control Agency (SAFCA), and the Central Valley Flood Protection Board (CVFPB), with coordination from the California Department of Water Resources (DWR). ARCF is authorized under the Water Resources Development Act (WRDA) 2016.

Major components of the ARCF originally authorized under WRDA 1996 included seepage remediation along approximately 22 miles of American River levees, levee strengthening, and raising 12 miles of Sacramento River levee in the Natomas Basin. The program has since expanded, and in 2016, an extensive levee-strengthening and erosion-repair program for the Sacramento and American Rivers was analyzed in the American River Watershed Common Features General Reevaluation Report Environmental Impact Statement/Environmental Impact Report (State Clearinghouse No. [2005072046](#)).

USACE is the primary federal agency responsible for ARCF oversight and management. CVFPB serves as the primary State agency, and DWR performs operations and maintenance of ARCF projects on CVFPB's behalf.

ARCF sub-projects are implemented through Project Partnership Agreements between USACE, CVFPB, and in some cases local flood control agencies. CVFPB and the local agencies serve as the Non-Federal Sponsors and are responsible for acquiring all real property interests necessary for construction, operation, and maintenance of ARCF sub-projects.

Because the Commission lacks general statutory authority to sell, hypothecate, or otherwise dispose of State-owned lands, it has, since 2020, authorized 11 leases to CVFPB for ARCF sub-projects involving levee repair, strengthening, and revegetation. Many additional ARCF-related leases are expected to come before the Commission over the next decade.

To support the Non-Federal Sponsors in meeting federal land-control and funding requirements, Commission staff have negotiated a Memorandum of Understanding (MOU) with DWR and CVFPB to promote consistency across all ARCF leases.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Cal. Pub. Res. Code §§ 6301, 6500, 6501.2; Title 2, Division 3, Chapter 1, Article 2, § 2004

STATE'S BEST INTERESTS:

The goal of the proposed MOU is to ensure that leasing practices for ARCF sub-projects remain consistent across the many ARCF authorizations that may come before the Commission. Because the operational life of the levee work associated with ARCF is intended to remain in place for several decades, the Commission has generally issued 49-year leases that incorporate terms negotiated among Commission staff, USACE, DWR, and CVFPB to ensure alignment with federal program requirements (see [Item 26, April 7, 2026](#), for an example).

The MOU confirms the parties' intent to maintain the 49-year lease term for future ARCF leases, as well as the form of lease previously developed among the federal and non-federal agencies and already approved by the Commission for earlier ARCF sub-projects. While the MOU was developed with the ARCF's pending sub-

projects in mind, the scope of the MOU extends to leasing practices over similar facilities within the "[State Plan of Flood Control](#)" (SPFC) which covers all ARCF sub-project areas as well as the Sacramento River and its tributaries within the jurisdiction of the CVFPB.

The MOU does not limit the Commission's discretion when considering ARCF or SPFC leases, nor does it affect the Commission's jurisdiction. It does not alienate sovereign lands or create exclusive rights over lands proposed for ARCF or SPFC sub-projects. CVFPB must continue to apply for each lease through the Commission's standard application process and must reimburse the Commission for staff costs associated with application review and processing. The purpose of the MOU is administrative: to guide staff in processing ARCF and SPFC applications consistently and to avoid conflicts with federal program requirements. Authorization to enter the MOU will apply to future applications as they are submitted and presented to the Commission.

For these reasons, staff believe that authorizing entry into the MOU is in the State's best interest.

OTHER PERTINENT INFORMATION:

1. Approval or denial of the MOU is a discretionary action by the Commission. Each time the Commission approves or rejects an MOU implicating the use of sovereign land, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands as authorized by law.
2. This action is consistent with the "Leading Climate Activism", "Meeting Evolving Public Trust Needs", and "Committing to Collaborative Leadership" Strategic Focus Areas of the Commission's 2021-2025 Strategic Plan.
3. Entering into a Memorandum of Understanding to address leasing practices across ARCF and SPFC applications is not a project as defined by the California Environmental Quality Act because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, sections 15060, subdivision (c)(3), and 15378, subdivision (b)(5).

EXHIBIT:

- A. Memorandum of Understanding Between the State Lands Commission, the Department of Water Resources, and the Central Valley Flood Protection Board for the use of State Lands for State Plan of Flood Control Facilities

RECOMMENDED ACTION:

It is recommended that the Commission:

STATE'S BEST INTERESTS:

Find that the proposed authorization to enter the MOU is in the State's Best Interest.

AUTHORIZATION:

Authorize the Executive Officer, or their designee, to execute the "Memorandum of Understanding Between the State Lands Commission, the Department of Water Resources, and the Central Valley Flood Protection Board for the use of State Lands for State Plan of Flood Control Facilities," in substantially the form attached as Exhibit A.

Exhibit A

Memorandum of Understanding Between the State Lands Commission, the Department of Water Resources, and the Central Valley Flood Protection Board for the use of State Lands for State Plan of Flood Control Facilities

This Memorandum of Understanding (MOU) is made and entered into by and between the State Lands Commission (SLC), the Department of Water Resources (DWR), and the Central Valley Flood Protection Board (CVFPB). SLC, DWR, and CVFPB are hereinafter at times collectively referred to as the "Parties" and individually as a "Party." The purpose of this MOU is to facilitate coordination between the Parties of State Plan of Flood Control projects constructed on public lands managed by the SLC.

Whereas, the State has a primary interest in adequately protecting lands subject to flooding, and in preserving the welfare of residents. (Water Code § 8532.)

Whereas, the State Plan of Flood Control (SPFC) means the State and federal flood control works, lands, programs, plans, conditions, and mode of maintenance and operations of the Sacramento River Flood Control Project described in Water Code section 8350, and of flood control projects in the Sacramento River and San Joaquin River watersheds authorized pursuant to Water Code section 12648 et seq. (Cal. Pub. Res. Code § 5096.805). The SPFC includes approximately 1,600 miles of levees and associated flood control infrastructure, including but not limited to dams, weirs, control structures, pumping plants, channels, bypasses, drainage facilities.

Whereas, the United States Army Corps of Engineers (USACE) is the primary federal agency that oversees and manages the SPFC.

Whereas, the CVFPB is the primary State agency that oversees and manages the SPFC, and DWR conducts operations and maintenance of the SPFC on behalf of the CVFPB.

Whereas, SPFC projects are subject to project partnership agreements between USACE, CVFPB, and sometimes local flood control agencies. CVFPB and local flood control agencies are referred to as the "Non-Federal Sponsors." The Non-Federal Sponsors are responsible for acquiring

real property interests needed for construction, operation, and maintenance of SPFC projects.

Whereas, the SLC manages and has exclusive jurisdiction over all ungranted tidelands and submerged lands owned by the State, including the beds of natural navigable rivers, streams, lakes, bays, estuaries, inlets, and straits. (Cal. Pub. Res. Code § 6301). The SLC does not have general statutory authority to sell, hypothecate, or otherwise dispose of these lands.

Whereas, numerous components of the SPFC are proposed on lands managed by the SLC requiring the SLC to issue leases to conduct work and place improvements.

Whereas, SLC has utilized a 20-year template lease for SPFC activities on State lands subject to SLC jurisdiction, and Non-Federal Sponsors must acquire such leases as part of the real property interests required by USACE for SPFC projects constructed on State lands.

Whereas, the expected operational life of SPFC projects is longer than 20 years, and USACE considers the SLC 20-year lease template to be a “non-standard estate.”

Whereas, USACE requested revisions to the SLC 20-year lease template, and in 2024 the Parties negotiated revisions to the SLC lease template for various SPFC projects.

Whereas, SLC has authority to issue leases up to 49 years as its maximum statutory entitlement and issuing leases of this length will assist the USACE and Non-Federal Sponsors to undertake the substantial infrastructure investment required under the SPFC.

Whereas, the Parties desire to enter this MOU to apply consistent and efficient leasing practices to future SPFC projects.

The Parties therefore agree as follows:

- I. SPFC Coordination. Coordination between the Parties is necessary to achieve State management of flood risk in areas protected by the SPFC, and to facilitate joint federal-State projects and activities related to the SPFC
- II. Lease Procedures for SPFC Activities.

- a. The Non-Federal Sponsors shall submit lease applications to the SLC through the SLC's "Online System for Customer Application and Records" portal or successor procedure.
 - b. Upon submission of a lease application for SPFC Facilities, the SLC shall process the lease as revised for SPFC facilities and bring the proposed lease to the Commission for approval at a public meeting as required by law. A template SLC lease as revised for SPFC facilities, negotiated pursuant to USACE comments in 2024, is included with this MOU as Attachment A. Commission staff will recommend that leases issued by the SLC under this MOU shall be for a term of 49 years unless a lesser term is requested by the Non-Federal Sponsors.
- III. Cooperation and Periodic Review. The Parties agree that they will cooperate and mutually assist each other in all appropriate and reasonable ways necessary to facilitate the goals and purposes of the SPFC. Periodically, the parties will review the procedures established in this MOU and the SLC lease as revised for SPFC activities and consider revisions as necessary or desirable to promote the objectives identified in this MOU.
- IV. SLC Authority. The Parties agree that SLC retains authority granted to SLC by law to require leases for SPFC activities carried out on State lands subject to SLC jurisdiction. In addition, SLC retains the authority to lease any land that is the subject of this MOU on the condition that said leasing is made after due notice to DWR and CVFPB and is not incompatible with the use of the land for SPFC purposes.

State of California
State Lands Commission

[Name]
[Title]

Approved as to legal form and
sufficiency:

[Name]
[Title]

State of California
Department of Water Resources

[Name]
[Title]

Approved as to legal form and
sufficiency:

[Name]
[Title]

State of California
Central Valley Flood Protection Board

[Name]
[Title]

Approved as to legal form and sufficiency:

[Name]
[Title]

Exhibit A
SLC Lease for State Plan of Flood Control
Facilities

RECORDED AT THE REQUEST OF
AND WHEN RECORDED MAIL TO:
STATE OF CALIFORNIA
California State Lands Commission
Attn: Land Management Division
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

**STATE OF CALIFORNIA
OFFICIAL BUSINESS**

Document entitled to free recordation
pursuant to Government Code Section
27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

A.P.N.: _____

County: _____

[Lease No.]

LEASE_____

This Lease consists of this summary and the following attached and incorporated parts:

Section 1	Basic Provisions
Section 2	Special Provisions Amending or Supplementing Section 1 or 3
Section 3	General Provisions
Exhibit A	Land Description
Exhibit B	Site and Location Map
Exhibit C	Mitigation Monitoring Program

SECTION 1: BASIC PROVISIONS

THE STATE OF CALIFORNIA, hereinafter referred to as Lessor acting by and through the **CALIFORNIA STATE LANDS COMMISSION** (100 Howe Avenue, Suite 100-South, Sacramento, California 95825-8202), pursuant to Division 6 of the Public Resources Code and Title 2, Division 3 of the California Code of Regulations, and for consideration specified in this Lease, does hereby lease, demise, and let to the **CENTRAL VALLEY FLOOD PROTECTION BOARD, [LOCAL SPONSOR/MAINTAINING AGENCY, (if applicable)]** hereinafter referred to as Lessee, those certain lands described in Exhibit A hereinafter referred to as Lease Premises, subject to the reservations, terms, covenants, and conditions of this Lease.

MAILING ADDRESS:

715 P Street, 4th Floor
Sacramento, CA 95814

LEASE TYPE:

General Lease – Public Agency Use (State Plan of Flood Control)

LAND TYPE:

Sovereign

LOCATION:

_____, near [CITY], _____ County, as described in Exhibit A attached and by this reference made a part hereof.

LAND USE OR PURPOSE:

All activities necessary, desirable, or convenient for the Lessee's design, entitlement, permitting, construction, use, occupation, repair, alteration, operation, and maintenance of flood control and environmental mitigation, restoration and enhancement work, including, but not limited to _____ (collectively, the "Work"). The portion of the Work entailing the design, permitting, entitlement, construction, and initial installation of mitigation and/or environmental enhancement measures shall be referred to at times as the "Project".

TERM:

49 years; beginning _____; ending _____, unless sooner terminated as provided under this Lease.

CONSIDERATION:

The public use and benefit, with the Lessor reserving the right at any time to set a monetary rent if the Lessor finds such action to be in the State's best interest or as specified in Paragraph 2.7 of Section 3 – General Provisions.

AUTHORIZED IMPROVEMENTS:

___ **EXISTING:** Levee

___ **TO BE CONSTRUCTED:** [DESCRIPTION OF PROJECT FEATURES TO BE CONSTRUCTED] in the [PROJECT NAME], pursuant to [ENABLING LEGISLATION AND CONTRACT].

LIABILITY INSURANCE:

\$0

SURETY BOND OR OTHER SECURITY:

\$0

SECTION 2: SPECIAL PROVISIONS

BEFORE THE EXECUTION OF THIS LEASE, ITS PROVISIONS ARE AMENDED, REVISED, OR SUPPLEMENTED AS FOLLOWS:

1. In compliance with the California Environmental Quality Act (CEQA), a _____ [TYPE OF CEQA DOCUMENT] was prepared and certified by _____ [LEAD AGENCY] for this agreement and is on file in the offices of the Lessor. The Work allowed under this lease is described in _____ [CITE CEQA DOCUMENT] and defined as _____ [PROJECT NAME IN CEQA DOCUMENT].
2. The land shown in Exhibit A of this Lease is subject to the Public Trust and is presently available to members of the public for recreational, waterborne commerce, navigation, fisheries, open space, and any other recognized Public Trust uses. Lessee also agrees that any proposed construction, operation, and maintenance activities, and subsequent use of the Lease Premises shall not unreasonably interfere with or limit Public Trust rights. Notwithstanding any paragraph of this Lease, public use shall neither be inconsistent nor incompatible with the construction, operation, and maintenance of the _____ [PROJECT].
3. Construction of the Project shall begin upon receipt of all approvals or permits and be completed no later than _____ [DATE].
4. No refueling, major repairs, or significant maintenance of vehicles or equipment will take place on the Lease Premises except where no feasible alternative exists.
5. Prior to commencement of any construction, operation, and maintenance activities, Lessee shall provide, or cause to be provided, to Lessor a schedule timeline chart from the Lessee, or contractor(s) performing the Work, showing all significant Work activities that will take place during performance of the Work. Additionally, upon Lessor's request and to the extent permitted by applicable law, Lessee shall submit, or cause to be submitted, a copy of any documents required under the applicable Project construction contract that describe the construction contractor's work execution plan that provides the details of the manpower, equipment, construction methods and procedures to be employed for each significant activity, and that describe jobsite safety procedures.
6. All construction, operation, and maintenance activities shall be carried out in accordance with all applicable safety regulations, permits, and conditions of all other agencies.

7. To the greatest extent possible, all construction, operation, and maintenance activities associated with the Work shall be conducted from the landside. Any equipment to be used on the Leased Premises is limited to that which is directly required to construct the authorized improvements.
8. Lessee shall maintain, or shall cause the general contractor performing the Work to maintain, a logbook on all waterborne vessels utilized in operations conducted under this Lease to keep track of all debris created by objects of any kind that may fall into the water. The logbook should include the type of debris, date, time, and location to facilitate identification and location of debris for recovery and site clearance verification. All debris shall be promptly removed from the Leased Premises by the Lessee, Lessee's agent, or by the general contractor performing the Work, within 28 calendar days of the conclusion of construction activities on the Leased Premises.
9. Prior to and at all times during construction, operation, and maintenance activities are taking place in the river, Lessee shall install, or cause to be installed, warning signs upstream and downstream of the construction site in order to provide notice to the public that construction, operation, and maintenance activities are taking place in the rivers and sloughs and to exercise caution.
10. Lessee agrees to be bound by and fully carry out, implement, and comply with, or cause to be carried out, implemented, and complied with all mitigation measures and reporting obligations identified as Lessee's responsibility as set forth in the Mitigation Monitoring Program ("MMP") [OR REPLACE MMP WITH OTHER CEQA DOCUMENT DESCRIBED IN SECTION 1 IF NOT AN EIR] attached hereto as Exhibit C and by this reference made a part of this Lease, or as modified by Lessor as permitted by law.
11. Section 3, Provision 7.3 is removed in its entirety.

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