

## Delta Flood Emergency Response and Recovery

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**Summary:** This panel presentation is the third in a series of presentations made to the Council since October 2012. Today's panel is comprised of representatives from the Federal Emergency Management Agency (FEMA) and the Governor's California Office of Emergency Services (Cal OES). The purpose of this agenda item is to highlight several key changes to federal disaster recovery programs that could result in major implications for the Delta in the case of a major disaster such as a levee failure. The panelist will briefly describe their programs, the recent changes, possible impacts to the Delta and discuss with the Council next steps to address these issues.

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### **Background**

On October 25, 2012, a Delta Levee panel comprised of representatives from FEMA, Cal OES, U.S. Army Corps of Engineers (USACE), and the Central Valley Flood Protection Board (CVFPB), convened to discuss levee related issues with the Council, including how changes in the USACE Rehabilitation and Inspection Program would impact available disaster recovery assistance. At the Council's meeting on October 24, 2013, a panel consisting of representatives from Department of Water Resources (DWR) and the Central Valley Flood Protection Board (CVFPB) provided information on programs/projects that are addressing the State's emergency preparedness for major flood events and on attempts by Delta levee regulatory and/or maintenance agencies to improve their disaster preparedness efforts by creating and participating in various emergency preparedness related programs, plans, and projects at the state and local levels.

In order to accomplish the Delta Reform Act's requirement that "*the Delta Plan shall attempt to reduce risk to people, property, and state interests in the Delta by promoting effective emergency preparedness, appropriate land uses, and strategic levee investments*" (Water Code, Section 85305 (a)), the Council must consider the role and track activities of key federal and state agencies responsible for flood emergency response and recovery in the Delta. A key element for the Council to consider is the traditional role of federal agencies as a main provider of funding for post disaster recovery and the implications of that changing role for the nation as well as the Delta.

As an example, on October 29, 2012, Hurricane Sandy battered the East Coast, particularly the densely populated New York and New Jersey coasts, with heavy rain, strong winds, and record storm surges. As of October 2013, the federal government has provided the following financial assistance to the impacted area/residents:

- \$1.4 billion in Individual Assistance to more than 182,000 survivors,
- \$2.4 billion in low-interest disaster loans have been approved by the U.S. Small Business Administration,
- \$3.2 billion to fund emergency work, debris removal, and repair and replacement of infrastructure, and

- \$7.9 billion in National Flood Insurance Program payments have been made to policy holders.

For decades, the federal government has played a key role in disaster recovery in the Delta through the following two approaches:

- Providing post-disaster assistance for rebuilding eligible Delta levees and other public works through FEMA's Public Assistance Program and the USACE's PL 84-99 Program. The eligibility standards for these programs are known as the FEMA Hazard Mitigation Plan (HMP) standard and the USACE PL 84-99 standard.
- Providing affordable federally-backed flood insurance for private buildings through the National Flood Insurance Program (NFIP). Based on 100-year flood events, the NFIP is designed to provide an affordable insurance alternative for disaster assistance to repair damage caused by floods to buildings and their contents.

Since previous presentations to the Council in October 2012 and October 2013 some key changes related to these disaster recovery programs have occurred. Specifically, several events have generated concern and confusion regarding the uncertainty of available federal funding sources for emergency response and post-disaster recovery for Delta Reclamation Districts (RDs) and Delta residents.

The events that have generated concern include the following:

- **FEMA has unilaterally terminated its 2010 Memorandum of Understanding (MOU) with Cal OES on December 8, 2012.** The purpose of the MOU is to clarify the requirements for FEMA Public Assistance funding for emergency flood fighting, emergency repair, permanent restoration, and/or replacement of eligible damaged non-Project Levees within the RDs in the Legal Delta. In the MOU termination letter from FEMA to Cal OES, dated October 23, 2012, it stated the reason for termination: "FEMA has determined that the MOU as currently drafted is vague and fails to adequately address both current levee standards and FEMA Public Assistance Policy." FEMA and Cal OES have been negotiating a new MOU since that time. The termination of the MOU removes some certainty that FEMA Public Assistance will be provided to Delta RDs in the event of such an emergency.
- **In July 2012, the U.S. Congress passed the Biggert-Waters Flood Insurance Reform Act of 2012 (BW-12).** The purpose of the BW-12 is for the NFIP to remain sustainable by increasing the NFIP premium for some policyholders over time <sup>[1]</sup> to reflect the true flood risks and costs of flooding, and to create counterproductive incentive for development in floodplains. However, as insurance becomes unaffordable, fewer Delta properties will have the ability to remain insured.

The combination of these two changes substantially undermines the potential for disaster recovery in the Delta. It also may significantly increase demand for the State to pay some disaster recovery costs previously reimbursed by federal agencies. For example, under current state law, reclamation districts that do not qualify for federal disaster recovery assistance may apply to the state for reimbursement of levee reconstruction costs through DWR's Delta levee program (Water Code Section 12993).

In addition to these impediments to disaster recovery following a levee failure, the changes in these federal programs are also a barrier to the economic vitality of Delta communities and farms as they increase the cost of conducting business by reducing the value of property that may be important collateral for business loans, and dissuading potential residents and investors.

### **Today's Briefing**

To better inform the Council about these issues and their potential impacts to the Delta, we have invited a panel of representatives from several federal and state agencies.

The panel members include:

1. Charles Rabamad, Assistant Director for Recovery, Cal OES
2. Marcia Sully, Technical Assistant Program Division Chief, Cal OES
3. Samuel Ronveaux, Infrastructure Branch Chief, FEMA Region IX
4. Edie Lohmann, National Flood Insurance Specialist. FEMA Region IX

During the panel's presentation or in follow-up discussion, the Council may wish to consider these questions:

1. What is the current status of the FEMA-Cal OES Hazard MOU negotiation, and what are the proposed revisions that FEMA and OES are seeking in a new MOU? What are the significant issues of disagreement that are barriers to a new MOU?
2. Given that there is currently no MOU in place, what are the impacts on available disaster recovery assistance in the Delta area and for Delta RDs? How would FEMA and Cal OES fund a levee repair should a disaster occur before a new MOU is signed?
3. What is the Biggert-Waters Flood Insurance Reform Act of 2012? What are the impacts to the Delta residents from this NFIP Reform Act?
4. What assistance can DSC or other federal or state agencies provide to address these potential issues?

### **Staff Recommendations for Next Steps**

1. Utilize outcomes of this panel discussion to guide direction for Council's work on one of its 2014 priorities, "Emergency Response Preparedness."
2. Invite other key federal and state agencies including; USACE, the Department of Water Resources, and the Central Valley Flood Protection Board, to attend future hearings to further discuss these issues and their policies and programs for disaster recovery in the Delta.

3. Priorities that the Council recommends for state investment in Delta levees could be shaped by federal eligibility standards for disaster recovery. These state investment recommendations could reflect strategies for maximizing eligibility for federal assistances for key elements of the levee system.
4. The Council may provide needed assistance and coordination to participating agencies as these needs are clearly identified.

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1. FEMA Publication "Biggert-Waters Flood Insurance Reform Act of 2012 and the NFIP." (October 2013). After October 2013:
  - Owners of non-primary residences with pre-FIRM subsidized rates will see a 25-percent annual increase until full-risk rates are reached.
  - Owners of businesses with pre-FIRM subsidized rates will see a 25-percent annual increase until full-risk rates are reached.
  - Upon a revised or updated flood map, BW-12 requires adjustment and phase in rates over 5 years "to accurately reflect the current risk of flood to such property."