

Date of Hearing: April 18, 2023

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE

Rebecca Bauer-Kahan, Chair

AB 896 (Aguiar-Curry) – As Amended April 7, 2023

**SUBJECT:** Flood control: City of Woodland: Lower Cache Creek

**SUMMARY:** Adopts and authorizes the Lower Cache Creek Flood Risk Management Project (Proposed Project) and authorizes the Department of Water Resources (DWR) to recommend the state to fund up to 99% of specified nonfederal costs for the Proposed Project. Specifically, **this bill:**

- 1) Adopts and authorizes the Proposed Project.
- 2) Allows the state to cover up to 99% of the cost of the Proposed Project.
- 3) Provides that the state may advance funds for the planning, engineering, designing, mitigation, and construction of the Proposed Project; the acquisition of required lands, easements, rights-of-way, and other facilities for the Proposed Project.
- 4) Grants the state discretion to reduce retention withheld under any cost-share agreement to fund the Proposed Project to zero percent.
- 5) Authorizes the state to advance funds for the Proposed Project before federal funds are available to the Proposed Project so long as any advanced state funds do not exceed the nonfederal share of the Proposed Project.
- 6) Requires the director of DWR to make the following findings before funds appropriated by the Legislature are provided to the Proposed Project:
  - a) The Proposed Project qualifies for a 99% state cost share based upon the gross calculation of the cumulative benefits the project provides as described in a nonfederal cost-share report submitted to the department for the project; and
  - b) The project is located in the County of Yolo, contains significant state assets, and economic hardship exists within the benefit area of the project, as demonstrated in a nonfederal cost-share report submitted to DWR for the project, and the project would include setback levees.
- 7) Establishes that the state will not assume liability for damages that may result from the Proposed Project and that funds will only be granted to the City of Woodland upon agreement to indemnify the state for damages.
- 8) Makes findings and declarations regarding the history of flood protection efforts along the Cache Creek and the need to improve and construct new levees.
- 9) Declares that a special statute is necessary because of the unique need to improve flood control on the Cache Creek.

**EXISTING LAW:**

- 1) Provides that the state has a primary interest in the manner in which flood waters shall be controlled for the protection of life and property and the control, storage, and use of the state's water resources (Water Code § 12578 *et seq.*).
- 2) Authorizes the state, under the State Water Resources Law of 1945, to participate in funding local flood control projects that are authorized by the Legislature and that meet specific criteria, including that the project qualifies for federal financial assistance and is authorized by Congress. Projects may be authorized pursuant to a U.S. Army Corps of Engineers (USACE) Chief Engineer's report, but cannot receive state funding until authorized by Congress. Additional criteria include that the project provides protection from flood damages in the most efficient manner practicable, the project considers environmental, recreational, and local economic conditions, the annual benefits exceed the annual costs, project avoids, minimizes, or mitigates impacts to environmental and recreational values, etc. (Water Code § 12582.7).
- 3) Provides that the state shall pay 50% of the nonfederal capital, environmental mitigation, and planning and engineering costs of flood management projects if authorized by the Legislature and if a project meets specified conditions (Water Code § 12585.7).
- 4) Provides the state may pay an additional 20% of the nonfederal share (up to 70% total) of a project if DWR or the Central Valley Flood Protection Board (CVFPB) determine that a project meets one of the following objectives (Water Code § 12585.7):
  - a) Protects, creates, or enhances endangered species or important habitats;
  - b) Protects or enhances open space;
  - c) Develops or enhances recreational opportunities;
  - d) Increases the level of protection for disadvantaged communities; or
  - e) Increases flood protection for state transportation facilities or state water supply facilities.
- 5) Defines "disadvantaged community" as a community with an annual median household income that is less than 80% of the statewide annual median household income (Water Code § 79505.5).
- 6) Authorizes numerous projects for the control, conservation, and utilization of destructive flood waters in the interest of the public welfare (Water Code § 12639).
- 7) Requires that DWR obtain the total cost of the project and the cost and benefit ratio before the project may be recommended to the Legislature (Water Code § 12630).
- 8) Adopts the flood control and water conservation improvement plan on Cache Creek in Yolo and Lake Counties (Water Code § 12663).

**FISCAL EFFECT:** Unknown. This bill is keyed fiscal.

**COMMENTS:**

- 1) **Purpose of this bill.** The purpose of this bill is to allow for the construction of the Proposed Project to provide flood protection to the City of Woodland, allow the state to cover up to 99% of the non-federal cost share of the project, and allow the state to advance funds towards the Proposed Project. According to the author, this bill is needed because the City of Woodland is at the highest risk of any urban area in the Central Valley: “The Lower Cache Creek Flood Management Project will provide flood protection for the City of Woodland and the disadvantaged communities that are disproportionately impacted by the risk of flooding. This project has been technically reviewed and approved by the [USACE] and federally approved and authorized by US Congress. This bill will provide needed state approval and authorize the state to provide funding upon appropriation. Further, given the impacted community’s disadvantaged status, this bill will increase the allowable state cost share for the project.”
- 2) **Background.** Water in Cache Creek only reaches the Woodland area at certain times of year due to upstream retention and diversions for water supply. The channel then passes north of the City of Woodland through levees constructed by USACE in 1958 as part of the federally authorized Sacramento River Flood Control Project. The leveed portion of Cache Creek discharges into the Cache Creek Settling Basin, which was also constructed by USACE as a separately authorized component of the Sacramento River Flood Control Project. Cache Creek has historically carried a large sediment load. The settling basin was constructed to prevent sediment carried by Cache Creek from adversely affecting the hydraulic capacity of the Yolo Bypass through excessive sediment deposition and thereby increasing the flood risk of the City of Sacramento.

*The Proposed Project.* A study by the USACE investigated and determined the extent of federal interest in a range of alternative plans that reduce flood risk to Woodland and surrounding areas. Lower Cache Creek has a history of flooding, and the study area has experienced 20 flood events since the mid-1900s. While Woodland has not historically flooded, this is a function of flood fighting efforts and good luck. An approximate population of 3,000 individuals and critical infrastructure, like schools, utilities, and Interstate 5, are at risk of flooding.

According to the 2020 independent review of the feasibility study,<sup>1</sup> “There is a risk to human life and safety in the City of Woodland, town of Yolo, and surrounding areas from flooding of Lower Cache Creek. Floodwaters from Lower Cache Creek create a significant life safety risk by inundating roadways from city streets to Interstate 5, which creates hazards for motorists and isolates citizens from critical facilities such as hospitals. Additionally, flooding from Lower Cache Creek poses a risk of economic damage to property and critical infrastructure within the City of Woodland, town of Yolo, and surrounding areas. The anticipated damageable property (structures and contents) is \$1.3 billion (October 2018 price levels) and the average annual damages are expected to range from \$20.7 million to \$27.5 million over the 50-year period of analysis. Damages are concentrated in an industrial area in northeastern Woodland, southwest of the CCSB. The threat of flooding to the City of Woodland includes potential impacts on both residential and commercial property, disruption

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<sup>1</sup> [Final Independent External Peer Review Report; Lower Cache Creek, Yolo County, Woodland Area, California, Feasibility Study](#)

of two major transportation routes (Interstate 5 and the Union Pacific Railroad), and impacts on agricultural production.”

The Proposed Project consists of improving existing levees and constructing new levees north of Woodland in order to prevent floodwaters emanating from Lower Cache Creek from reaching the built-up portion of the city. Proposed project features include nearly 6 miles of new levees, levee embankment, seepage berms, drainage channels, cutoff walls, a weir, and closure structures across roads and railways. With the Proposed Project in place, areas in northeast Woodland, where damages are concentrated, would see a reduction in the annual chance of flooding from up to 7.0% to about 0.1%. The cost of the project is \$366,387,000 (non-federal share \$128,235,450) with a benefit cost ratio of 2.1.<sup>2</sup>

*Cost share analysis.* Under the DWR regulations in Title 23 CCR 572 and 574, DWR or the CVFPB will review the draft nonfederal cost-share report and submit a final nonfederal Cost-Share report to the Legislature for final state cost-share approval. The City of Woodland reviewed what state cost share might be if the 70% cap on the state’s cost share were not in place. The “Lower Cache Creek, Yolo County, Woodland and Vicinity, California Project – Draft Nonfederal Cost-Sharing Report” (Report) concludes that the Proposed Project is eligible for a state cost-share of 10.7% increase because it significantly increases flood protection for a disadvantaged communities. In addition, the Report finds that the Proposed Project is eligible for a state cost-share increase of 10% because it would increase flood protection for segments of two state transportation facilities (State Route 113 and Interstate Highway 5). Finally, the Report finds that the Proposed Project is eligible for an additional 28% increase due to benefits to open space, habitat, and recreation due to the construction of levee setbacks. According to the report, the Proposed Project would be eligible for a 44% increase in state cost-share (for a total of 99%) if the 70% cap under existing law were not in place.

Under the existing 70% cap, the state’s share for the Proposed Project is approximately \$89.8 million (70% of the nonfederal share of approximately \$128 million). An increase of the state’s share to 99% of the nonfederal share would increase the state’s contribution by approximately \$37 million.

*Measure S.* In 2003, an approved flood wall project was stopped by a voter initiative. This measure was added by a group of Woodland area residents on the ballot as Measure S, which asked whether the city should be prohibited from funding or taking any action that supported the Lower Cache Creek Flood Barrier (flood wall) or a substantially similar structure. Despite opposition from those who did not want the flood wall option to be taken off the table permanently and who did not want to continue having to pay flood insurance, the measure passed.

In 2012, Woodland, in partnership with USACE and DWR, re-initiated the Lower Cache Creek Feasibility Study (Study). The Study looked at 26 different alternatives. Woodland established a local citizen advisory committee made up of a broad cross-section of community members including those who were opposed to the previous 2003 project. In

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<sup>2</sup> [Lower Cache Creek, Yolo County, Woodland and Vicinity, California Project – Draft Nonfederal Cost-Sharing Report](#)

2021, the city certified the environmental impact report and approved a revised project (supported by the advisory committee) and that, while similar in geographical location, included many structural and non-structural benefits that were not part of the 2002 flood protection project.

Despite these efforts, a lawsuit was filed against the city claiming the approved project was substantially similar to the 2002 project and therefore in violation of Measure S. Yolo Superior Court Judge Sam McAdam recently issued a ruling in favor of plaintiffs. The city has since filed an appeal and is preparing a ballot measure to overturn Measure S. In response to this, this bill contains language that bill “*does not affect, and shall not be construed to affect, the validity of City of Woodland Measure S (2004), its applicability to any flood control project, including the subject of this act, or the outcome of the litigation.*”

- 3) **Policy considerations.** In recent years, SB 496 of 2021 and SB 489 of 2022 passed to provide up to a 100% cost share on a flood protection projects along the Pajaro River. The Senate Natural Resources and Water Committee analysis for AB 489 presciently noted:

*“The issues on the Pajaro River may be unique. Nonetheless, between the waiving of the local match requirement provided by SB 496 and the advance payment provisions of this bill, it seems likely that future bills will cite these bills as precedent for similarly waiving matching rates and providing advance payment.”*

This bill is continuing precedent set in waiving the state cap on funding for flood projects. However, in light of recent, disastrous events in Pajaro, it is clear that levee maintenance and flood protection is needed and special support is needed to support low-income areas. *The Legislature may want to consider how strictly it will abide by established limits to cost-shares or if the limits to cost-share based on any of the outline criteria should be changed instead of evaluated on a case-by-case basis.*

- 4) **Arguments in support.** The California Central Valley Flood Control Association writes in support of this bill as the Proposed Project will “provide additional flood protection to the state’s existing portfolio and yield ecological benefits that contribute to the Central Valley Flood Protection Plan’s Conservation Strategy. The project will also provide multiple benefits to the city of Woodland’s entire industrial area, which is a vital part of the region’s food and agricultural economy, and economically disadvantaged communities residing in the floodplain.”
- 5) **Related legislation.** SB 496 (Laird), Chapter 310, Statutes of 2021, authorizes DWR to pay up to 100% of specified nonfederal costs for the Flood Risk Management Project on the Pajaro River.

SB 489 (Laird), Chapter 667, Statutes of 2022, authorizes the state to advance funds available, upon appropriation by the Legislature, for a flood control project on the Pajaro River even in the absence of matching federal funds.

## REGISTERED SUPPORT / OPPOSITION:

### Support

California Central Valley Flood Control Association

**Opposition**

None on file

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