

Date of Hearing: April 9, 2024

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE

Diane Papan, Chair

AB 2450 (Aguiar-Curry) – As Amended March 7, 2024

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, which upon appropriation, would be used for the planning, engineering, designing, mitigation, and construction of the Proposed Project.
- 3) Provides that the state may advance funds for the planning, engineering, designing, and construction of the Proposed Project, as well as the acquisition of required lands, easements, rights-of-way, and other facilities for the Proposed Project.
- 4) 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.
- 5) Grants the state discretion to reduce retention withheld under any cost-share agreement to fund the Proposed Project to zero percent.
- 6) 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 potential damages.
- 7) 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 Proposed 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.
 - c) That a binding agreement with a federally recognized tribal government will provide monitoring and a treatment plan for any cultural resources disturbed or identified during the construction of the Proposed Project.

- 8) Maintains the validity of City of Woodland Measure S and current litigation regarding flood control projects in Woodland.
- 9) Makes findings and declarations regarding the history of flood protection efforts along the Cache Creek and the need to improve and construct new levees.
- 10) 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 *et seq.*).

- 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).
- 9) Authorizes a 100% state cost share for the flood control project on the Pajaro River (Water Code § 12687.5).
- 10) Authorizes the Proposed Project in the Water Resources Development Act of 2002 (Section 8401 (2), Public Law 117–263, 136 Stat 3839).

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 U.S. 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,¹ “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 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 six 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 2.1.²

Cost share analysis. Under the DWR regulations in Title 23 CCR 572–575, 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 (see chart below). The “Lower Cache Creek Federal 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 99% state cost-share 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.

There is only one example of a flood control project exceeding the 70% threshold, which was for the Pajaro Project (Water Code § 12687.5). The Pajaro Project justified an over 100%

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

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

state cost-share due to protections to three transportation facilities (15%) and significant protection to disadvantaged communities (44%) (see chart below).

| Item | Lower Cache Creek Calculate Cost Share | Pajaro Calculated Cost Share | Cost Share Caps |
|---|--|------------------------------|-----------------|
| Base Cost Share* | 50% | 50% | 50% |
| Benefit to Disadvantaged Communities† | 10.70% | 44% | 20% |
| Protection of Transportation Facilities‡ | 10% | 15% | 20% |
| Combined Habitat, Open Space, and Recreation Objective♦ | 28% | — | 20% |
| Potential Total State Cost Share | 99% | >100% | 70% |

*required by Water Code § 12585.7

†calculated depending on the degree of benefit

‡ 5% per facility

♦for improvements beyond what is required for the project or mitigation

Measure S. In 2003, an approved flood barrier project was stopped by a voter initiative due to concerns that the flood barrier did not adequately address impacts to properties (primarily agricultural land) north of Woodland. Although the flood barrier would not increase the frequency of flooding, it would increase the depth and duration on those lands. In 2004, Woodland voters adopted Measure S, which prohibited the city from funding or taking any action that supported the flood barrier or a substantially similar structure.

In 2012, Woodland, in partnership with USACE, CVFPB, and DWR, re-initiated the Lower Cache Creek Feasibility Study (Study). The Study looked at 26 alternatives to reduce flood risk determine and evaluate economic feasibility. In 2021, the City, with the support of an advisory committee, certified the environmental impact report and approved a revised project (the Proposed Project) and that, while similar in geographical location, included many structural and non-structural benefits that were not part of the original flood barrier project that would lower the flood stage and duration of flooding on the northern properties of previous concern.

A lawsuit was filed against the City claiming the Proposed Project was substantially similar to the 2002 flood barrier 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. This year the City placed Measure M on the ballot to approve the Proposed Project and authorize the city to accept federal and state financial contributions—effectively overturning Measure S. Measure M opposition questioned the need for the project when there has not been a major flood in the area and are concerned that the project will pull thousands of acres out of flood risk allowing for “explosive commercial and residential sprawl.” Measure M failed with 70% of residents voting “no.”

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) **Proposed committee amendments.** 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 SB 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.”

Indeed, with 44% of the additional cost share being necessitated by protections to disadvantaged communities and in light of recent, disastrous events in Pajaro, it is clear that special support for levee maintenance and flood protection are needed to support low-income areas.

The committee staff is aware that the City of Woodland is actively engaging to plan for supplemental projects to achieve the open space, habitat, and recreation objective, representing 28% of addition cost share. While this is a laudable goal, the federally authorized Project does not currently accomplish that objective. Therefore, the Project is better suited to established state cost share in Water Code § 12585.7, which *would enable 70% state cost share* and the opportunity for DWR to determine if any additional cost share is warranted based on the supplemental features currently in discussion. As such, the committee may wish to adopt the following amendments to strike sections 2 and 3 of this bill and replace with the following:

Section 12663.1 is added to the Water Code, to read:

(a) The Lower Cache Creek Project along Cache Creek adopted and authorized by the United States Congress in the Water Resources Development Act of 2022 (Public Law 117-263), is hereby adopted and approved substantially in accordance with the recommendations of the Chief of Engineers of the United States Army Corps of Engineers in the Report entitled “Lower Cache Creek, Yolo County, Woodland and Vicinity, California Final Chiefs Report” and dated June 21, 2021, as follows:

(1) At an estimated cost to the state of such sum as may be appropriate for state cooperation by the Legislature upon the recommendation and advice of the department or the board.

(2) Upon a specific written determination by the department that the project meets the requirements of Section 12582.7.

(b) The state assumes no liability for damages that may result from the project by either of the following:

(1) Authorizing the project in accordance with this section.

(2) The appropriation by the Legislature of funds upon the recommendations and advice of the department.

(c) The City of Woodland may receive funds only if it enters into an agreement with the department pursuant to which the City of Woodland agrees to indemnify and hold and save harmless the state, its officers, agents, and employees for any and all liability for damages that may result from the project.

(d) State funding, upon appropriation by the Legislature, may be used for planning, engineering, designing, mitigation, and constructing the project within authorized project boundaries as set forth in the recommendations of the Chief of Engineers of the United States Army Corps of Engineers, as authorized by the Water Resources Development Act of 2022 (Public Law 117-263). The state may advance funds for the planning, engineering, design, and construction of the authorized project, and the acquisition of required lands, easements, rights-of-way, utility relocations, disposal sites, and borrow areas for, and mitigation of, the authorized project, as specified in the Army Corps of Engineers report entitled "Lower Cache Creek, Yolo County, Woodland and Vicinity, California Final Interim Feasibility Report Flood Risk Management." The state may reduce retention withheld under any cost-share agreement to fund the Lower Cache Creek Flood Risk Management Project to 0 percent and may advance funding in the absence, in whole or in part, of federal funding, in which case the funding shall not exceed the amount that would be the equivalent nonfederal share if there was federal project funding.

(e) Before any funds appropriated by the Legislature are provided to the flood control project, the director shall find each of the following:

(1) The project qualifies for 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.

(2) 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 the department for the project, and the project would include setback levees.

(3) A binding agreement with a federally recognized tribal government headquartered within the County of Yolo provides for both of the following:

(A) Monitoring of ground disturbing project activities by trained tribal monitors.

(B) A treatment plan for any tribal cultural resources disturbed or otherwise identified as a result of those ground disturbing project activities.

(f) The project and supplemental elements may qualify for a state cost share up to 99-percent based upon the identification and inclusion of a habitat restoration plan, the protection of vital state infrastructure, and acknowledgement of the economically disadvantaged conditions of the community, as described in a nonfederal cost-share report submitted to the department for the project.

(g) For purposes of this section, "liability for damages" includes, but is not limited to, liability for damages relating to the construction or operation of the project or the failure of the project to operate as intended.

- 4) **Arguments in support.** The City of Woodland writes in support of this bill, citing that this area is at highest flood risk of any urban area in the Central Valley and how the storms of 2023 “taught us yet again how costly delay can be in designing and implementing flood control projects.”
- 5) **Related legislation.** AB 896 (Aguiar-Curry) of 2023 was substantially similar to this bill and would have authorized the Proposed Project and increased the state cost share up to 99%. AB 896 died in Assembly Appropriations.

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 677, 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.

AB 781 (Daly), Chapter 302, Statutes of 2021, authorized the state to provide subventions funds to the County of Orange for a flood control project upon determination by DWR that the project meets specified requirements.

REGISTERED SUPPORT / OPPOSITION:

Support

City of Woodland (Sponsor)

Opposition

None on file

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