

CENTRAL VALLEY FLOOD PROTECTION BOARD

3310 El Camino Ave., Ste. 170
SACRAMENTO, CA 95821
(916) 574-0609 FAX: (916) 574-0682



September 1, 2021

Governor's Office of Planning & Research

September 02 2021

STATE CLEARINGHOUSE

Mr. Paul Brunner, Executive Director
Three Rivers Levee Improvement Authority
1114 Yuba Street, Suite 218
Marysville, CA 95901
pbrunner@co.yuba.ca.us

Subject: Comments on the 500-year Flood Protection Project's Notice of Preparation of an Environmental Impact Report (SCH No. 2021070157)

Dear Mr. Brunner,

The Central Valley Flood Protection Board (Board) appreciates the opportunity to comment on the Notice of Preparation (NOP) of an Environmental Impact Report (EIR) for the proposed 500-year Flood Protection Project (proposed project). The EIR will be prepared to disclose and address potential environmental impacts associated with the proposed project. The proposed project is located in Yuba County on the north side of the Bear River, west side of the Western Pacific Interceptor Canal (WPIC), and south side of the Yuba River. Improvements also may include modifying and extending existing embankments in the western portion of the Yuba Goldfields.

Responsibility of the Central Valley Flood Protection Board

The Board is the State's regulatory agency responsible for ensuring appropriate standards are met for the construction, maintenance, and operation of the flood control system that protects life, property, and habitat in California's Central Valley. The Board serves as the State coordinator between local flood management agencies and the federal government, with the goal of providing the highest level of flood protection possible to California's Central Valley.

The Board operates under authorities as described in California Water Code (Water Code), which requires the Board to oversee future modifications or additions to facilities of the State Plan of Flood Control (SPFC). In addition, pursuant to assurances provided to the United States Army Corps of Engineers (USACE) by the Board on behalf of the State, the USACE Operation and Maintenance Manuals, Code of Federal Regulations, Title 33, § 208.10, and United States Code, Title 33, § 408, the Board is responsible for the operation and maintenance of the SPFC facilities. The USACE requires the Board to serve as the lead non-Federal sponsor for projects to improve or alter facilities of the SPFC pursuant to Code of Federal Regulations, Title 33, § 408. The State's objectives include fulfilling the USACE's expectations pursuant to the assurances provided to the USACE.

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Encroachment Permit

Per California Code of Regulations, Title 23, Waters, Division 1 (Title 23), Section 6, approval by the Board is required for all proposed work or uses, including the alteration of levees within any area for which there is an Adopted Plan of Flood Control within the Board's jurisdiction. In addition, Board approval is required for all proposed encroachments within a floodway, on adjacent levees, and within any Regulated Stream identified in Title 23, Table 8.1. Specifically, Board jurisdiction includes the levee section, the waterward area between project levees, a minimum 10-foot-wide strip adjacent to the landward levee toe, the area within 30 feet from the top of bank(s) of Regulated Streams, and inside Board's Designated Floodways. Activities outside of these limits which could adversely affect Federal-State flood control facilities, as determined by Board staff, are also under the Board's jurisdiction. Permits may also be required for existing unpermitted encroachments or where it is necessary to establish the conditions normally imposed by permitting, including where responsibility for the encroachment has not been clearly established or ownership or uses have been changed. This proposed project is located within the Board's permitting authority, thereby requiring an approved Board permit.

Federal permits, including USACE Section 404 and Section 10 regulatory permits and Section 408 Permission, in conjunction with a Board permit, may be required for the proposed project. In addition to federal permits, state and local agency permits, certification, or approvals may also be required. State approvals may include, but are not limited to, California Department of Fish and Wildlife's Lake and Streamed Alteration Agreement and Regional Water Quality Control Board's Section 401 Water Quality Certification. The Applicant must obtain all authorizations that the proposed project may require.

Flood Impacts Analysis

Pursuant to Section 15 of Title 23, the Board may deny a permit if the proposed project could:

- Jeopardize directly or indirectly the physical integrity of levees or other works;
- Obstruct, divert, redirect, or raise the surface level of design floods or flows, or the lesser flows for which protection is provided;
- Cause significant adverse changes in water velocity or flow regimen;
- Impair the inspection of floodways or project works;
- Interfere with the maintenance of floodways or project works;
- Interfere with the ability to engage in flood fighting, patrolling, or other flood emergency activities;
- Increase the damaging effects of flood flows;
- Be injurious to, or interfere with, the successful execution, functioning, or operation of any adopted plan of flood control; or
- Adversely affect the State Plan of Flood Control, as defined in the Water Code.

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As a responsible agency under the California Environmental Quality Act (CEQA), the Board will need to have adequate information in order to evaluate whether to issue a permit at a future date. Accordingly, please be prepared to provide specific analyses to determine if the proposed project could result in any potential impacts listed above. This includes direct impacts to facilities under construction, as well as indirect impacts from the project to surrounding facilities. This encompasses any proposed work that contemplates modifications to a SPFC Facility, Lower San Joaquin Levee District Facility, or operation of any adopted plan of flood control or the hydrology of the water ways including: increases or decreases in water surface elevation due to construction activities and encroachments; any work including dewatering and vibrations from both pile driving and heavy machinery that may destabilize the SPFC levees; and potential levee damage resulting from heavy machinery construction activities and associated haul routes. It is therefore recommended that the environmental document include a specific flood facility impacts analysis section.

Notice of Preparation Specific Comments

According to p. 2 “Based on the preliminary review, improvements may be necessary along a total of up to approximately 11 miles of existing levee segments located on the north side of the Bear River, west side of the WPIC, and south side of the Yuba River. Improvements also may include extending the WPIC west levee to the north and east and modifying and extending existing embankments in the western portion of the Yuba Goldfields (Goldfields).”

- Title 23 provides standards that govern the design and construction of projects that affect the flood control works and floodways. Board staff recommends that you review Title 23 Standards, including but not limited to Sections 115 (Dredged, Spoil, and Waste Material), 116 (Borrow and Excavation), 117 (Supplemental Borrow Standards for the Yuba River), 120 (Levees), 121 (Erosion Control), 123 (Pipelines, Conduits and Utility Lines), 126 (Fences and Gates), 131 (Vegetation), 130 (Patrol Roads and Access Ramps) and 134 (Supplemental Standards for the Yuba River-Daguerre Point Dam to Confluence with the Feather River). Any deviation (or variation) from these standards will require approval from the Board.
- The State is in the process of forming a Maintenance Area based on Reclamation District (RD) 784 declarations of inability to maintain the Horseshoe Levee. The property owners that receive flood risk reduction benefit from the Horseshoe Levee contend that RD 784 is seeking to only protect urban areas. The proposed project intends to strengthen only the west side levees of the WPIC which gives the Board concern in relation to levee superiority and inequities that arise from raising only one side of the WPIC.
- As described above, the proposed project will require a permit from the Board and the Board may deny a permit if a project increases the damaging effects of flood flows. The Board has specific concerns that the proposed project will potentially increase the damaging effects of flood flows to the east side of the WPIC levee. Without a detailed study to prove otherwise, the proposed project, when raised to

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provide protection level from 200-year to 500-year on the WPIC west levee, will potentially push more flood flows toward the eastside of the WPIC levee, increasing damaging effects to the area including to the WPIC East Levee (an SPFC levee) under flood events at 200-year and above. As stated above, the Board recommends a specific flood facility impacts analysis section in the environmental document and requests that the analysis address these concerns related to the WPIC East Levee, at a minimum.

Closing

The potential risks to public safety, including increased flood risks, need to be considered when developing proposed projects that seek to modify flood control works or the hydrology of the water ways. Board staff is available to discuss any questions you have regarding the above comments. Please contact Jennifer Stewart at (916) 574-1719, or via email at Jennifer.Stewart@CVFlood.ca.gov if you have any questions.

Sincerely,

Andrea Buckley

Andrea Buckley
Environmental Services and Land Management Branch Chief

cc: Office of Planning and Research
State.Clearinghouse@opr.ca.gov

Michael C. Wright, Chief Engineer
Michael.Wright@cvflood.ca.gov