

CENTRAL VALLEY FLOOD PROTECTION BOARD

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



August 19, 2024

Dan Leavitt
Manager of Regional Initiatives
San Joaquin Joint Powers Authority
949 East Channel Street
Stockton, CA 95202
dleavitt@sjrrc.com

Subject: Comments for the Draft Environmental Impact Report, Merced Intermodal Track Connection Project, SCH# 2023010061, Merced County

Dear Dan Leavitt,

The Central Valley Flood Protection Board (Board) appreciates the opportunity to comment on the Draft Environmental Impact Report (DEIR) for the proposed Merced Intermodal Track Connection Project (proposed project).

The proposed project involves tree removal, vegetation clearing, sediment removal, placing bridge piles, and constructing a new rail bridge over Bear Creek. The proposed project is located in Bear Creek, a regulated stream and federally regulated channel that is within the Board's permitting authority, therefore an encroachment permit may be required. Further, Black Rascal Creek (referred to as Fahrens Creek in the DEIR), is a regulated stream and borders the northern boundary of the proposed project.

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 Sections 128 (Bridges) and 131 (Vegetation). Any deviation or variation from Title 23 standards will require approval from the Board.

Responsibility of the Central Valley Flood Protection Board

The Board is the State's regulatory agency responsible for enforcing appropriate standards 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, Section 208.10, and United States Code, Title 33, Section 408, the Board is responsible for the operation and maintenance

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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, Section 408. The State's objectives include fulfilling the USACE's expectations pursuant to the assurances provided to the USACE.

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.

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 Central Valley Regional Water Quality Control Board's Section 401 Water Quality Certification and/or Waste Discharge Requirement. 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 an encroachment 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
- Adversely affect the State Plan of Flood Control, as defined in the California Water Code

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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 Jordan Robbins at (916) 524-3454, or via email at Jordan.Robbins@CVFlood.ca.gov if you have any questions.

Sincerely,

Andrea Buckley

Andrea Buckley
Deputy Executive Officer

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