

**CENTRAL VALLEY FLOOD PROTECTION BOARD**

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



June 8, 2023

Lacey McBride  
Merced Subbasin Groundwater Sustainability Agency  
2222 M Street  
Merced, CA 95340

Subject: Comments on the Sandy Mush Mutual Water Company Reservoir Storage Project  
(SCH No. 2023050183)

Dear Ms. McBride,

The Central Valley Flood Protection Board (Board) appreciates the opportunity to comment on the Negative Declaration for the proposed Sandy Mush Mutual Water Company Reservoir Storage Project (proposed project). The Negative Declaration was prepared to disclose and address potential environmental impacts associated with the proposed project. The proposed project is located in Merced County and involves the construction of a storage reservoir along Duck Slough with points of delivery on Owens Creek, both are considered Regulated Streams by the Board.

### **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.

Ms. McBride  
Page 2 of 2

## **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 encroachment 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 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; or
- Adversely affect the State Plan of Flood Control, as defined in the California Water Code.

Ms. McBride  
Page 2 of 2

The Board, as a Responsible Agency under the California Environmental Quality Act (CEQA), will review and consider the environmental effects of the proposed project identified in the Negative Declaration, and will reach its own conclusions on whether and how to approve the project involved (14 CCR 15096, subd. (a)). This includes direct impacts to facilities under construction, as well as indirect impacts from the proposed project to surrounding facilities. Accordingly, the comments herein are intended to assist in the development of a robust CEQA document capable of supporting the Board's permitting process. Board staff provides the following comments regarding potential environmental effects within the Board's jurisdiction.

### **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 Gregory Hendricks at (916) 837-3763, or via email at [gregory.hendricks@cvflood.ca.gov](mailto:gregory.hendricks@cvflood.ca.gov) if you have any questions.

Sincerely,

*Andrea Buckley*

Andrea Buckley  
Environmental Services and Land Management Division Chief

ec: Office of Planning and Research  
[State.Clearinghouse@opr.ca.gov](mailto:State.Clearinghouse@opr.ca.gov)

Andrea Buckley  
[Andrea.Buckley@cvflood.ca.gov](mailto:Andrea.Buckley@cvflood.ca.gov)

Lacey McBride  
Merced Subbasin Groundwater Sustainability Agency  
[Lacey.mcbride@countyofmerced.com](mailto:Lacey.mcbride@countyofmerced.com)