ST43 CVFPB

STATE OF CALIFORNIA – CALIFORNIA NATURAL RESOURCES AGENCY EDMUND G. BROWN JR., GOVERNOR

CENTRAL VALLEY FLOOD PROTECTION BOARD
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February 1, 2012

Ms. Terry Macaulay
Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, California 95814

Subject: Delta Plan Draft Environmental Impact Report SCH Number: 2010122028

Dear Ms. Macaulay:

The Central Valley Flood Protection Board (Board) is responsible for flood safety within the California Central Valley and maintains the integrity of the existing flood control system and designated floodways through the Board's regulatory authority by issuing permits for encroachments and partnering with the U.S. Army Corps of Engineers to build, repair and strengthen flood control facilities. Projects within the jurisdiction of the Board are required to meet standards for the construction, maintenance, and protection of adopted plans of flood control that will protect public lands from floods. The jurisdiction of the Board includes the Central Valley and the Delta, including all tributaries and distributaries of the Sacramento River, the San Joaquin River, and designated floodways (Title 23 California Code of Regulations (CCR), Section 2). ST43-1

Regional conservation planning within the Delta requires balancing project needs with multiple environmental objectives. Working with the Delta Stewardship Council early in the planning process will help identify and mitigate potential adverse impacts to the flood control system without adversely impacting flood risks, levee integrity and the Board's flowage easements within the flood control system including, but not limited to, the Delta and the Yolo Bypass.

Staff for the Central Valley Flood Protection Board has reviewed the subject document and provides the following comments:

1. The Delta Plan strategies should consider impacts to the flood control system when the Council incorporates another plan, project, or program into the Delta Plan, including the following:

   Structural Integrity Impacts - Projects proposed in the Delta Plan should include engineering solutions for mitigating impacts to the structural integrity of the levees and other structures within the State Plan of Flood Control.

   Hydraulic Impacts - Hydraulic impacts due to encroachments could impede flood flows, reroute flood flows, and/or increase sediment accumulation. Projects proposed in the Delta Plan should include mitigation measures for channel and levee improvements and maintenance to prevent and/or reduce hydraulic impacts. ST43-2

Response to comment ST43-1

Comment noted.

Response to comment ST43-2

This EIR identifies programmatic mitigation measures to avoid increasing flood potential by addressing potential hydraulic impacts, structural integrity impacts, and sediment and vegetation management, as described in EIR subsection 5.4.3.6. As described in Section 2B of the Draft Program EIR, the Delta Stewardship Council does not propose or contemplate directly authorizing any physical activities, including but not limited to construction or operation of infrastructure. Rather, through the Delta Plan, the Delta Stewardship Council seeks to influence the actions, activities, and/or projects of other agencies, the details of which would be under the jurisdiction and authority of the agencies that will propose them in the future and conduct future environmental review. Without specific details of future projects, it is not possible for the Delta Stewardship Council to design site-specific mitigation measures. Accordingly, in the absence of specific proposed physical projects, this EIR makes a good faith effort to disclose the potentially significant environmental effects of the types of projects that may be encouraged by the Delta Plan and to identify program-level mitigation measures. Impacts on each of the potentially affected resources areas are analyzed at a program level in Sections 3 through 21 of this EIR.

Long Term Vegetation Management - Sediment accumulation has resulted in the establishment of woody vegetation within the Delta channels. Woody vegetation growth that is not managed has a negative impact on channel capacity and increases the potential for levee over-topping. When a channel develops vegetation that then becomes habitat for wildlife, maintenance to initial baseline conditions becomes more difficult as the control of vegetative growth may be subject to environmental constraints. ST43-2

Projects proposed in the Delta Plan should include vegetation maintenance plans and funding for maintaining agencies responsible for managing desirable habitat without unduly compromising channel capacity. Vegetation management within the flood control system is difficult due to the potential to contaminate surface water resulting from herbicide applications and increased costs for manual vegetation removal. State and local maintaining agencies responsible for vegetation management are subject to significant increases in maintenance costs when implementing vegetation control measures.

2. Section 2A, Page 2A-2, states "Certain actions are statutorily excluded from the definition of covered action in Water Code section 85057.5(b), including the following: A regulatory action of a State agency (such as adoption of a water quality control plan by the State Water Resources Control Board or issuance of a California Endangered Species Act permit by the Department of Fish and Game)".

   In accordance with Water Code Section 85057.5 (b) "Covered action" does not include any of the following: (1) A regulatory action of a state agency."

   Section 2A, Page 2A-2 and the Delta Plan should be revised to show:
   "The Central Valley Flood Protection Board actions are not a covered action and are exempt from the Delta Plan when approving projects, designating floodways, enforcing Title 23 California Code of Regulations, and issuing encroachment permits to enforce standards for the construction, maintenance, and protection of adopted flood control plans including, but not limited to, the Delta and the Yolo Bypass." ST43-3

   The Central Valley Flood Protection Board executes regulatory actions by approving projects, enforcing Board standards, and issuing encroachment permits to enforce standards for the construction, maintenance, and protection of adopted flood control plans that will protect public lands from floods. As a result, the regulatory actions of the Central Valley Flood Protection Board would not be a covered action under the Delta Plan.

3. Section 2A, Page 2A-4 states "Although a regulatory action by another State agency is not a "covered action," the underlying action regulated by that agency can be a covered action (provided it otherwise meets the definition in subsection 2.1.2, above)".

   In accordance with Water Code Section 85057.5 (b) "Covered action" does not include any of the following: (1) A regulatory action of a state agency." The definition showing "the underlying action regulated by that agency can be a covered action…" appears to conflict with Water Code Section 85057.5. ST43-4

Response to comment ST43-3

This is a comment on the project, not on the EIR. Regulatory action of a state agency is one of the exemptions to the definition of a covered action (Water Code section 85057.5).

Response to comment ST43-4

This is a comment on the project, not on the EIR. The underlying action regulated by another state agency, such as a proposed encroachment in a floodway, can be a covered action.

The Delta Plan and the Draft EIR should be revised to show "Covered actions in accordance with Water Code Section 85057.5 do not include regulatory actions of a state agency." ST43-4

4. Figure 5-1 only shows State - Federal Project Levees. Figure 5-1 should be revised to include the Board's regulated streams, as the Board also regulates streams without levees within the Delta. ST43-5
5. Section 5.3.1 should list Title 23 California Code of Regulations as a reference under the heading "Major Sources of Information". ST43-6
6. Section 5.3.4, page 5-6, Line 6 should list "Designated Floodways" as the Board's jurisdiction includes designated floodways located within the Delta. ST43-7
7. Section 5.3.4.3, page 5-10, Lines 17 and 18 should be corrected to state that the Stewart Tract levees are State - Federal project levees and are regulated by the Board. The Draft EIR incorrectly states that these are non-project levees. ST43-8
8. Section 5.4.3.2, page 5-44, lines 25-31 should be revised to state that Cache Slough, Consumnes River, Mokelumne River, San Joaquin River, and Yolo Bypass are regulated by the Board. The Draft EIR should state that any proposed project, including restoration projects, within these waterways will require approval and permitting by the Board. The Board is required to maintain design flood flow capacity within these waterways and will require that no adverse hydraulic impacts will result. ST43-9
9. Section 5, Page 5-9, Figure 5-3: The figure is titled "The San Joaquin River Flood Control Project," but depicts the Sacramento River Flood Control Project. The map should be corrected to show the San Joaquin River Flood Control Project. ST43-10
10. Section 22, Page 22-41: Table 22-1 Related Actions, Programs, and Projects Considered in the Cumulative Impact Assessment shows "The plan is scheduled for adoption by the Central Valley Flood Control Board in 2012." Revise to show "..Central Valley Flood Protection Board ... ". ST43-11
11. The Central Valley Flood Protection Board, as a responsible agency (Public Resources Code Section 21069), received the Draft Delta Plan Environmental Impact Report Executive Summary, November 2011 SCH# 2010122028, and a CD-ROM, however, the CD-ROM was blank and did not include the Delta Plan Draft Environmental Impact Report. The Delta Plan Draft EIR was available via the Internet address http://www.deltacouncil.ca.gov/delta-plan-draft-eir. ST43-12
12. Appendix D, page D-28, Section 2.2.19, Line 837: The Board and the Department of Fish and Game have an agreement to manage habitat within the Yolo Basin Wetlands Project within the Yolo Bypass. The regulatory framework should include reference to this agreement (enclosed). ST43-13
13. On September 14, 2011, the Board provided comments on the Fifth Staff Draft of the Delta Plan. The comments are enclosed and should be included in the Delta Plan. ST43-14

Response to comment ST43-5

Figure 5-1 is consistent with the paragraph on page 5-4 of the Draft Program EIR that discusses project and non-project levees, and does not need to be modified.

Response to comment ST43-6

Subsection 5.3.1 includes reference materials used in preparing Section 5 of the EIR. The regulations in Title 23 of the California Code of Regulations were considered as general background during preparation of this EIR.

Response to comment ST43-7

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

Response to comment ST43-8

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

Response to comment ST43-9

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

Response to comment ST43-10

A revised Figure 5-3 was issued as an erratum to the Draft Program EIR on November 4, 2011.

Response to comment ST43-11

In response to this comment, please see text change(s) in Section 5 in this FEIR.

Response to comment ST43-12

Comment noted.

Response to comment ST43-13

In response to this comment, please see text change(s) in Section 5 in this FEIR.

Response to comment ST43-14

Comment noted. The draft Delta Plan has since been amended. The Final Draft Delta Plan was published in November 2012 and analyzed in the Recirculated Draft Program EIR.

A Board permit is required prior to starting work within the Board's jurisdiction for the placement, construction, reconstruction, removal, or abandonment of any landscaping, culvert, bridge, conduit, fence, projection, fill, embankment, building, structure, obstruction, encroachment, excavation, the planting or removal of vegetation, and any repair or maintenance that involves cutting into the levee (CCR Section 6).

The permit application and Title 23 CCR can be found on the Central Valley Flood Protection Board's website at http://www.Board's.ca.gov/. Maps showing the Board's jurisdiction are available via Internet website at http://gis.bam.water.ca.gov/bam. Additional references are enclosed, including a map identifying the State Flood Control Facilities within the Legal Boundary of the Delta and a table showing State Flood Control Features within the Legal Boundary of the Delta. ST43-15

If you have broad policy questions, please contact Eric Butler, Supervising Engineer, at (916) 574-0707, or via email at ebutler@water.ca.gov , or for environmental questions, contact James Herota, Staff Environmental Scientist at (916) 574-0651, jherota@water.ca.gov.

Sincerely,

Jay S. Punia

Jay S. Punia, P.E.
Executive Officer

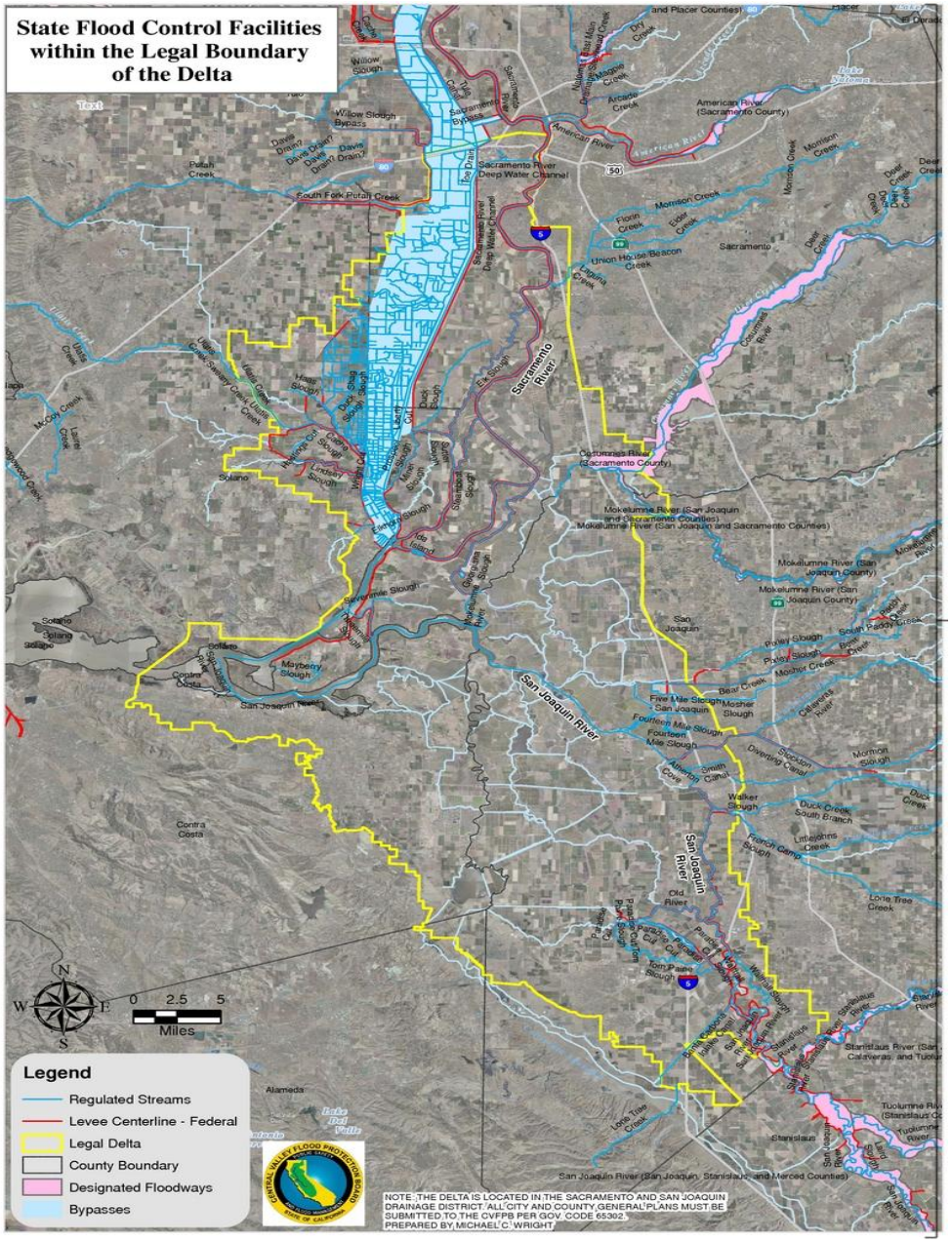
Enclosures

cc: Governor's Office of Planning and Research
State Clearinghouse
1400 Tenth Street, Room 121
Sacramento, California 95814

Eric Butler, Supervising Engineer

Response to comment ST43-15

Comment noted.



No comments

- n/a -

STATE OF CALIFORNIA – CALIFORNIA NATURAL RESOURCES AGENCY EDMUND G. BROWN JR., GOVERNOR
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September 14, 2011

Ms. Terry Macaulay, P.E.
Acting Deputy Executive Officer
Delta Stewardship Council
980 9th Street, Suite 1500
Sacramento, California 95814

Dear Ms. Macaulay:

The Central Valley Flood Protection Board (Board) hereby submits the following comments on the Fifth Staff Draft of the Delta Plan, dated August 2, 2011. The comments address matters discussed in **Chapter 7 – Reduce Risk to People, Property, and State Interests in the Delta.**

Page 165, Lines 10-18:

Encroachments located within project levees and project levee right-of-way are jurisdictionally permitted through the Central Valley Flood Protection Board. The California Code of Regulations, Title 23 Waters, Division 1 Central Valley Flood Protection Board (Title 23) describes this encroachment permit process. The encroachment permit process applies to all projects existing and proposed within State/federal flood control levees, designated floodways, bypasses, and regulated streams. There is no exemption for ecosystem restoration projects, ongoing agricultural or flood management activity. Board permits may also be required for Covered Actions listed in Table 7.1.

The Central Valley Flood Protection Board must be consulted for any encroachment involving facilities of the State Plan of Flood Control, which are listed in Title 23. This comment was made on the Third Draft of the Delta Plan but was not incorporated into either the Fourth or Fifth Draft. **The Board insists that this comment be incorporated into the Delta Plan.**

Page 165, Lines 19-32:

Board permits are required for any existing or proposed projects located in the following areas. There is no exemption from the Board's permit process for ecosystem restoration projects, ongoing agricultural or flood management activity in any of these Board-jurisdictional areas:

- Areas located in the Yolo Bypass from Fremont Weir through Cache Slough to the Sacramento River including the confluence of Putah creek into the bypass;
- The Cosumnes River-Mokelumne River confluence;

No comments

- n/a -

- The Lower San Joaquin River, Lower San Joaquin River Floodplain Bypass, Paradise Cut, and any other slough, bypass, or channel protected by State/federal levees included in the State Plan of Flood Control and Central Valley Flood Protection Plan.

Page 165, Lines 25-32:

The Board recommends that any modifications proposed for the Lower San Joaquin River Floodplain Bypass should be fully vetted in the Delta Plan Environmental Impact Report on a programmatic level. Again, this comment was submitted against the Third Draft but not acknowledged in either the Fourth or Fifth Draft.

Thank you for allowing the Central Valley Flood Protection Board to comment on the Fifth Draft Delta Plan. We sincerely hope that you will incorporate these comments into the Delta Plan. If you have any questions, please contact Mr. Len Marino at (916) 574-0608 or email at lmarino@water.ca.gov.

Sincerely,

Jay S. Punia

Jay S. Punia
Executive Officer

cc: All Board members
Deborah Smith, Deputy Attorney General

No comments

- n/a -

State Flood Control Features within the Legal Boundary of the Delta

State / Federal Levees	Location within Delta Boundary
Banta Carbona Intake Canal	From 2800'+/- south west of San Joaquin River to San Joaquin River
Bear Creek	From Thorton Road to Trinity Parkway
Cache Slough	Ulatis Creek to Yolo Bypass
Calaveras River	From open space between orset St. and La Cresta Way, Stockton, to San Joaquin River
Elk Slough	From Sacramento River to Sutter Slough
French Camp Slough	From Interstate 5 to San Joaquin River
Georgiana Slough	From Sacramento River to Mokelumne River
Haas Slough	From Bunker Station Road to Ulatis Creek
Lindsey Slough	From Hastings Cut to Wright Cut
Miner Slough	From Sutter Slough to Duck Slough and from Duck Slough to Sacramento River Deep Water Channel (East side only)
Old River	From Paradise Cut to San Joaquin River
Paradise Cut	From Tom Paine Slough to San Joaquin River
Sacramento River	I Street Bridge to Mayberry Slough
Sacramento River Deep Water Ship Channel	From West Sacramento to Minor Slough (N) and from Miner Slough (S) to Sutter Slough
San Joaquin River	From Stanislaus to Atherton Cove
Shag Slough	Yolano Mills Road to Cache Slough
Steamboat Slough	Sacramento River to Sutter Slough
Sutter Slough	Sacramento River to Sacramento River Deep Water Channel
Threemile Slough	San Joaquin River to Sacramento River
Ulatis Creek	South side only from 1.5+/- miles upstream of Cache Creek Slough
Walthall Slough	North side only from South Williamson Road to San Joaquin River
Wright Cut	West side only, All

Designated Floodways	Location within Delta Boundary
Cosumnes River	Along Cosumnes River from Delta Boundary to Mokelumne River
Mokelumne River	From the extension of North Ray Road to Cosumenes River
San Joaquin River	From confluence of San Joaquin River and Stanislaus River to 300' +/- downstream of Coconino Road
Stanislaus	2800'+/- east of Manteca Road to the confluence of Stanislaus River and San Joaquin River

Regulated Streams / Stream Title	Location within Delta Boundary
Atherton Cove	All
Banta Carbona Intake Canal	California Aquaduct to San Joaquin River
Bear Creek	Thorton Road to Mosher Slough
Cache Slough	All
Calaveras River	From open space between orset St. and La Cresta Way, Stockton, to San Joaquin River
Cosumnes River	From Delta Boundary to 3,700'+/- west of Interstate 5
Duck Slough	All (within Yolo Bypass)
Elk Slough	All
Five Mile Slough	All
Fourteen Mile Slough	All
French Camp Slough	From the Delta Boundary to the San Joaquin River
Georgiana Slough	All
Haas Slough	All
Hastings Cut	All
Ida Island	All
Liberty Cut	All (within Yolo Bypass)
Lindsey Slough	All
Mayberry Slough	All
Miner Slough	All
Mokelumne River	From the extension of N. Ray Road to Cosumnes River
Mormon Slough	Delta Boundary / Center Street (Stockton) to Stockton Port
Morrison Creek	From Delta Boundary to Sacramento River
Mosher Slough	Thorton Road to Bear Creek
Old River	From Paradise Cut to San Joaquin River
Paine Slough	All
Paradise Cut	From San Joaquin River to Old River
Prospect Slough	All (within Yolo Bypass)
Sacramento River	I Street Bridge to San Joaquin River
Sacramento River Deep Water Ship Channel	From Sacramento River (West Sac.) to Sacramento River
San Joaquin River	From Stanislaus River to Sacramento River
Sevenmile Slough	All
Shag Slough	All (within Yolo Bypass)
Smith Canal	All
South Fork Putah Creek	From Road 106 to Yolo Bypass
Steamboat Slough	All
Sutter Slough	All
Threemile Slough	All
Tom Paine Slough	All
Ulatis Creek	From Rio Dixon Road to Cache Slough
Walker Slough	From Delta Boundary to French Camp Slough
Walthall Slough	All

No comments

- n/a -

MANAGEMENT AGREEMENT

AMONG

CALIFORNIA DEPARTMENT OF FISH AND GAME

CALIFORNIA DEPARTMENT OF WATER RESOURCES

AND

THE RECLAMATION BOARD OF THE STATE OF CALIFORNIA

REGARDING

YOLO BASIN WETLANDS

WHEREAS, The Reclamation Board ("Board") entered into a Memorandum of Understanding with the U.S. Army Corps of Engineers ("Corps") on November 30, 1953, setting forth the responsibilities of the Board for the Sacramento River Flood Control Project ("SRFCP"), including the Yolo Bypass; and

WHEREAS, in the 1953 Memorandum of Understanding, the Board agreed to hold and save the United States free from claims for damages resulting from construction of the works and to maintain and operate all works after their completion; and

WHEREAS, in 1955, the Corps promulgated an Operation and Maintenance Manual for SRFCP, including the Yolo Bypass, which requires specified maintenance including the following:

- Maintaining the channel and floodway clear of debris, weeds, and wild growth; and

No comments

- n/a -

- Maintaining the channel and floodway such that there is no restriction by deposition of waste materials, building of unauthorized structures or other encroachments; and

- Maintaining the channel and the floodway in such a way that the capacity is not reduced by the formation of shoals; and

- Weeds and other plant growth in the channel and floodway are to be cut in advance of the flood season, and together with all debris, removed from the channel and floodway; and

WHEREAS, the Corps recognizes that the 1955 SRFCP Operation and Maintenance Manual will be modified to direct the Department of Fish and Game ("DFG") to be responsible for maintenance within the boundaries of the project modification, and that maintenance activities will be different than those presented in 1955, but consistent with the purposes of public safety; and

WHEREAS, floodwaters in the Yolo Bypass flowed at or above design capacity during February 1986; and

No comments

- n/a -

WHEREAS, DFG has entered into a Local Cooperation Agreement with the Corps for a modification of SRFCP, including the development of wetlands, uplands, riparian woodland, and related habitats ("Project Modification"); and

WHEREAS, pursuant to this LCA, DFG will be assuming various operation and maintenance obligations and holding the United States harmless from claims arising out of the Project Modification; and

WHEREAS, Water Code Section 8618 authorizes DFG to enter into an agreement with the Board obligating DFG to do and perform those things required of the State by federal law for SRFCP, and for DFG to assume responsibility for all claims of damage or liability made against the State and its agencies or the United States arising from the Project Modification; and

WHEREAS, pursuant to Water Code Section 8360, the Department of Water Resources ("DWR") has supervisory powers over the maintenance and operation of SRFCP, of which the Yolo Bypass is a part; and

WHEREAS, pursuant to Water Code Section 8361, DWR has the direct obligation to maintain the Yolo Bypass; and

No comments

- n/a -

WHEREAS, DWR, the Board, DFG and the Corps believe that the Project Modification can be compatible with flood control; and

WHEREAS, the respective parties hereto wish to clarify the operation, maintenance, and other obligations for that portion of the Yolo Bypass Project affected by the Project Modification; and

WHEREAS, the Board is allowing wetlands to become established in an area of the Bypass formerly used for agricultural purposes; and

WHEREAS, DFG, DWR, and the Board agreed to enter into this Agreement in lieu of an encroachment permit; and

WHEREAS, it is the intent to make this Agreement a part of the Project Modification Operations and Maintenance Manual.

NOW THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. The Parties agree to cooperate in the operation and maintenance of the portion of SRFCP affected by the Project Modification; and

2. DWR shall continue to maintain the levees pursuant to the Corps' 1955 Operation and Maintenance Manual; and

No comments

- n/a -

3. DFG will monitor, operate, maintain, repair, replace, and reconstruct ("manage") the Yolo Bypass channel in the Project Modification area pursuant to the Corps' Project Modification Operation and Maintenance Manual; and

4. DWR and the Board shall have only oversight responsibility for management of the Project Modification, unless DFG fails to perform such management; and

5. DFG will endeavor to manage the Project Modification in a manner that will be compatible with agricultural practices.[1] The management of the Project Modification will be compatible with and not adversely affect maintenance or repair practices of SRFCP adjacent to the Project Modification.

6. Before undertaking any management actions necessary for public safety purposes, DWR shall contact the DFG Regional Manager by telephone or telefax and by letter thirty (30) days prior to any work during non-flood season; and

7. During flood season, DWR need only notify the DFG, Region 2, Regional Manager by telephone or telefax prior to performing the work; and

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1. The foregoing provision is not intended to create any enforceable rights for third party claims regarding adjacent agriculture.

No comments

- n/a -

8. DFG agrees to hold the Board and DWR harmless and assumes responsibility for all claims of damage or liability made against DWR or the Board arising in any way from the construction, operation and maintenance of the Project Modification; and

9. DWR will continue to operate SRFCP for which it has responsibility, including the Yolo Bypass; and

10. If after the Project Modification is constructed and the Board receives State authorization for a future flood control project in the Yolo Bypass that coincides with some or all of the geographical area of the Project Modification, DFG shall seek State authorization for cosponsorship and funding for the flood control project through the annual budget process. DFG funding and cosponsorship shall be restricted to the State portion of the increased project and mitigation that are directly attributed to the Project Modification, which is the subject of this Agreement; and

11. Prior to any construction in the Yolo Bypass, DFG shall submit four sets of complete plans and specifications for the Board's and DWR's review, comment, and recommendations; and

No comments

- n/a -

12. DFG shall not allow commencement of construction prior to receiving, and incorporating to the extent feasible as determined by the Corps, in consultation with DFG, the Board's recommendations on the submitted plans and specifications.

13. This Agreement may be executed in several duplicate counterparts, each of which shall be an original.

California Department of Fish and Game

By: Boyd H. Gibbons, Director Date: Feb. 11, 1994

The Reclamation Board

By: Wallace McCormack, President Date: Feb 3 1994

California Department of Water Resources

By: David N. Kennedy, Director Date: Feb 7-94

No comments

- n/a -