

APPENDIX F
RESPONSES TO COMMENTS
ON THE DRAFT FEASIBILITY REPORT AND EIR/SEIS

This appendix contains the comment letters (including transcribed comments received during the July 22, 2013 public meeting) and USACE’s and SBFCA’s individual responses to comments.

The draft Integrated Feasibility Report and EIR/SEIS was circulated on June 14, 2013. An “All Interested Parties” notice was also sent out to a mailing list. A Notice of Availability was published in the Federal Register on June 14, 2013, and a public meeting was held by USACE and SBFCA on July 22, 2013 to receive comments on the report from agency representatives and other interested parties. Meeting attendees included five members of the public.

USACE received six comment letters during the 45-day public review period, which ended on July 29, 2013 and two comments were submitted during the July 22, 2013 public meeting. Table 1 lists all parties who submitted comments. Each letter and individual comment has been assigned a number/letter designation for cross-referencing. Table 2 includes the text of all comments and responses to the comments. The comments were reproduced as written and may contain grammatical and spelling errors. The comment letters received follow Table 2.

Table 1		
List of Commenters		
Letter #	Commenter	Date Of Comment
Federal Agencies (F)		
F1	Federal Emergency Management Agency	June 11, 2013
F2	U.S. Environmental Protection Agency	July 25, 2013
F3	U.S. Department of Interior, Office of Environmental Policy and Compliance	July 29, 2013
State Agencies (S)		
S1	Governor’s Office of Planning and Research	July 30, 2013
Local Agencies (L)		
L1	Sacramento Area Flood Control Agency	July 25, 2013
Individuals (I)		
I1	Patrick Porgans	July 29 and 30, 2013
Public Meeting (PM)		
PM1	Lawrence Mentz	July 22, 2013
PM1	Patrick Porgans	July 22, 2013

**Table 2
Responses to Comments**

Name	Comment No.	Comment	Response
Federal Agencies			
FEMA	FEMA-1	<p>Please review the current effective countywide Flood Insurance Rate Maps (FIRMS) for the Counties of Butte (Community Number 060017), Maps revised January 6, 2011 and Sutter (Community Number 060394), Maps revised December 2, 2008. Please note that the Counties of Butte and Sutter, State of California are participants in the National Flood Insurance Program (NFIP). The minimum, basic NFIP floodplain management building requirements are described in Vol. 44 Code of Federal Regulations (44 CFR), Sections 59 through 65.</p> <p>A summary of these NFIP floodplain management building requirements are as follows:</p> <p>All buildings constructed in a riverine foodplain (i.e., Flood Zones A, AO, AH, AE, and A1 through A30 as delineated on the FIRM) must be elevated so that the lowest floor is at or above the Base Flood Elevation level in accordance with the effective Flood Insurance Rate Map.</p> <p>If the area of construction is located within a Regulatory Floodway as delineated on the FIRM, any development must not increase base flood elevation levels. The term development means any man-made change to improved or unimproved real estate, including but not limited to building, other structures, mining, dredging, filling, grading,</p>	<p>Regulations concerning the NFIP are noted. The proposed action would not result in the construction of buildings in a flood hazard zone or development in a regulatory floodway that would raise base flood levels.</p>

		<p>paving, excavation or drilling operations, and storage of equipment or materials. A hydrologic and hydraulic analysis must be performed <i>prior</i> to the start of development, and must demonstrate that the development would not cause any rise in base flood levels. No rise is permitted within regulatory floodways.</p> <p>Upon completion of any development that changes existing Special Flood Hazard Areas, the NFIP directs all participating communities to submit the appropriate hydrologic and hydraulic data to FEMA for a FIRM revision. In accordance with 44 CFR, Section 65.3, as soon as practicable, but not later than six months after such data becomes available, a community shall notify FEMA of the changes by submitting technical data for a flood map revision. To obtain copies of FEMA's Flood Map Revision Application Packages, please refer to the FEMA website at http://www.fema.gov/business/nfip/forms.shtm.</p>	
<p>U.S. Environmental Protection Agency</p>	<p>EPA-1</p>	<p>The SDEIS (p. 6-4) acknowledges that the Tentatively Selected Plan (TSP) must be evaluated pursuant to Section 404(b)(1) of the Clean Water Act in accordance with the Federal Guidelines for Specification of Disposal Sites for Dredged or Fill Materials (40 CFR 230). The SDEIS also acknowledges that the project must be the least damaging practicable alternative (LEDPA) and would include all appropriate and practicable measures necessary to minimize adverse effects on the aquatic environment. The SDEIS does, not however, demonstrate that the TSP is the LEPDA. It states that the 404(b)(1) alternatives analysis will be included in the Final EIS.</p>	<p>A 404(b)(1) Evaluation is included in the Final document in Appendix D. The evaluation identifies the Locally Preferred Plan as the LEDPA. While the NED plan results in less fill than the LPP, the alternative would not reduce flood risk to the communities of Gridley, and Biggs and therefore not adequately meet the project purpose. As described in the evaluation, the fill activity associated with relocation of the Sutter Butte Canal has been minimized by relocation of the levee where feasible to avoid encroaching on the channel and increasing base flood elevations.</p>

		<p>The practice of deferring, until the conclusion of the NEPA process, the disclosure of information needed for findings of compliance with the Guidelines makes it difficult for agencies and the public to provide timely and substantive input on the evaluation of alternatives, which could inform the Corps' decision making process. Integrating the section 404(b)(1) alternatives analysis into the Draft EIS alternatives analysis would afford agencies and the public a more meaningful opportunity to evaluate impacts and provide relevant and timely feedback to inform these analyses and the Corps' decision.</p> <p>We have rated this SDEIS as EC-2 – Environmental Concerns – Insufficient Information (see Enclosure 1: “Summary of Rating Definitions and Follow-Up Action”) because it is unclear whether the TSP is LEDPA, and we are unable to assess the likelihood that affected waters would be successfully restored. We recommend that, in the future, the 404(b)(1) alternatives analysis be included in Draft EISs.</p>	
<p>U.S. Environmental Protection Agency</p>	<p>EPA-2</p>	<p>The Sutter Pilot Feasibility Report Mitigation Monitoring Plan (MMP) does not identify restoration measures, success criteria, or monitoring commitments for 3.099 acres of waters of the U.S. that would be temporarily affected by the project. We note that such information is provided in the MMP for restoration and /or creation of riparian, non-riparian, and Valley elderberry habitat. We recommend that the FEIS and MMP include commitments to actively restore temporarily affected waters of the U.S. The FEIS and MMP should identify restoration measures and success criteria, and include monitoring</p>	<p>In response to the comment, the FEIS and MMP has been revised to include restoration measures, success criteria, or monitoring commitments for jurisdictional wetlands temporarily affected by the project.</p>

		commitments to ensure successful restoration of these resources.	
U.S. Environmental Protection Agency	EPA-3	According to the MMP (p. 4-1), success criteria for riparian vegetation, oak woodland, and Valley elderberry include demonstrating at least 60 percent survival of all plantings after 20 years. Elsewhere (p. 3-9), the MMP states, "It is anticipated that at the end of the 3-year establishment period, 70% survivorship of woody species will be attained." According to the Corps Regulatory Program Uniform Performance Standards for Compensatory Mitigation Requirements (Version 8/9/2012, SPD QMS 12505.1) permittees are required to ensure equal or greater than 80 percent survivorship for vegetation and monitor annually until a minimum of 2 years of success post-irrigation. We recommend that the project be required to meet this performance standard.	The recommendation has been adopted. The MMP has been revised to meet the performance standard of at least 80 percent survival for a minimum of 2 years post-irrigation.
U.S. Environmental Protection Agency	EPA-4	The MMP (p. 5-2) recommends herbicide application in areas that will be planted, and identifies the herbicides that are most likely to be used. EPA recommends that the MMP state the conditions under which pesticides would be used, including actions needed to comply with California's general National Pollutant Discharge Elimination System permits for pesticide applications. Note that the California permits may require advance submission of a pesticide application plan, in some cases 90 days in advance. More information is available at http://www.swrcb.ca.gov/water_issues/programs/npdes/aquatic.shtml . You may also wish to contact Phil Isorena (Phillip.Isorena@waterboards.ca.gov) at the California State Water Resources Board.	Per EPA's recommendation, text has been added to the MMP to specify under which conditions pesticides would be used and the actions needed to comply with NPDES permits.

U.S. Department of Interior, Office of Environmental Policy and Compliance	DOI-1	The Department of the Interior has received and reviewed the subject document and has no comments to offer.	No response required.
State Agencies			
Governor's Office of Planning and Research	OPR-1	The State Clearinghouse submitted the above Named EIR to selected state agencies for review. The review period closed on July 29, 2013, and no state agencies submitted comments by that date. This letter acknowledges you complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act.	No response required.
Local Agencies			
Sacramento Area Flood Control Agency	SAFCA-1	<p>My comments today focus on one issue – the exclusion of a Locally Preferred Plan (LPP) that includes a System Wide Improvement Framework (SWIF) to address the vegetation issue as a means of addressing the worst risk first.</p> <p>In August 2012, a meeting was held on the American River Watershed Common Features GRR with representatives from the Assistant Secretary of the Army for Civil Works and USACE Headquarters. The meeting was held to figure out how to avoid the issues surrounding the vegetation, access, and encroachments on levees from holding up planning reports and the needed structural fixes to the levees for public safety. In that meeting it was generally acknowledged that a plan which proposed removal of</p>	On March 28, 2013, the CVFPB submitted a Letter of Intent (LOI) notifying USACE that the local maintaining agencies within the Sutter Basin led by SBFCA intended to develop and implement a (SWIF) plan. The SWIF would bring the existing levees into compliance with the existing project Operations and Maintenance manual and is considered part of the without project condition (No Action Alternative). Therefore, while a SWIF is not a component of the LPP, a SWIF is being implemented but by the CVFPB and the local maintaining entities separate from the study. The LOI would allow the Basin's levee system to retain eligibility in USACE' PL 84-99 Rehabilitation and Inspection Program (RIP)

		<p>all vegetation would likely not be implementable from a cost, environmental and public acceptance standpoint and would result in the critical risk reduction features being held up due to the vegetation issues. It was decided that the planning document would include an LPP that is consistent with the structural components of the alternative the District developed, but within an overall framework that would allow the worst risks to be addressed first. This would be achieved utilizing a SWIF to address correcting the remaining deficiencies that represent a much lower threat to public safety, such as vegetation.</p>	<p>for a period of two years while SBFCA develops a SWIF.</p> <p>For purposes of the study, a non-variance approach to ETL compliance was assumed for purposes of the study, strict ETL compliance was assumed for TSP and maximum potential impact shown in EIS. During PED phase compliance with ETL 1110-2-571 will be readdressed and every means then available for ETL compliance will be fully evaluated.</p> <p>Based upon the LOI to develop a SWIF plan to achieve compliance with existing Operations and Maintenance requirements, including vegetation removal in accordance with the existing O&M requirements, the Sutter Basin Pilot Feasibility Study has assumed that there will be no deferred maintenance; i.e., the without project condition will be fully compliant with existing O&M requirements. During construction, any unacceptable inspections items and deficiencies that have not been addressed in accordance with the SWIF, will be included in the Government construction contract as a non-Federal expense.</p>
<p>Sacramento Area Flood Control Agency</p>	<p>SAFCA-2</p>	<p>The LPP would have several capital improvement components phased-in over time in a manner to address the worst risk first. The LPP would also have a component that would be a long-term plan of action, including a financing plan, addressing any remaining encroachments, access, real estate, vegetation, and other issues not addressed as part of the capital</p>	<p>As explained above, a SWIF is being implemented to address deficiencies in operation and maintenance. Unwanted vegetation growth, encroachments, and erosion are all system-wide issues and make up 97% of Sutter Basin’s deficiencies listed in the USACE Unacceptable Items List.</p>

		improvement components of the LPP for the levees covered by the planning document as part of the SWIF.	
Sacramento Area Flood Control Agency	SAFCA-3	The way the policy is being implemented in the SBPFDR does not allow for the worst risks to be addressed first: it is an all or nothing approach. It significantly increases the risk that the plan will be opposed on several levels because of the vegetation component. Therefore, the way the policy is being implemented in the SBPFDR could result in increased risk to the public by delaying critical structural work.	Critical levee improvements are not being delayed. With USACE 408 permission, SBFCA has initiated construction of the Feather River West Levee Improvement EIP Project.
Sacramento Area Flood Control Agency	SAFCA-4	The Corps should not be promoting the idea of a SWIF as a mechanism to address the concept of “worst first” publically and to Congress, but then deny the use of it in practice.	A use of a SWIF to address levee O&M deficiencies has not been denied. USACE has worked closely with maintaining agencies to promote a SWIF to maintain eligibility in the PL 84-99 RIP.
Sacramento Area Flood Control Agency	SAFCA-5	I respectfully submit these comments and request that the Corps follows the policy it is promoting publically and allow an LPP with a SWIF component to address the controversial vegetation issue, and other difficult but low risk encroachment and access issues over time. An alternative solution may be to include the SWIF components as part of the alternatives presented in the SBPFDR.	As explained above, a SWIF is not a feature of the LPP; the CVFPB has submitted a Letter of Intent to implement a SWIF separate from the study.
Individuals			
Patrick Porgans	Porgans-1	Position Statement: As stated in writing and at meetings we acknowledge and support the <i>Sutter Basin Feasibility Study</i> and all of the components contained in the Sutter Butte Flood Control Agency’s plan to provide the much needed flood control protections for Yuba City, Live Oaks, Gridley and	USACE and SBFCA have conducted an extensive alternatives review during several phases of the project development. Oroville reoperation and other alternatives were considered. The alternatives presented best address the primary levee and flood

		Biggs. However, neither the Feasibility Study nor the proposed flood control plan (Locally Preferred Plan (LLP/Alt.-8) provide assurances that the proposed flood control protections will be effective nor has the local sponsors, Sutter Butte Flood Control Agency and the state Central Valley Flood Control Protection Board, identified or secured the funds required to construct either the Agency's or the State's proposed Flood Plans.	management deficiencies in each stretch of the Feather River. River dredging was evaluated and screened during evaluation of the preliminary array. Oroville reoperation and Feather river dredging would not address geotechnical performance which was determined to be a large component of the current FRM performance and assurance. Comment did not necessitate change to analysis.
Patrick Porgans	Porgans-2	<p>Feasibility Report - Funding Questions Remain Unanswered: On behalf of its client, P&A attended federal, state and regional meetings to discuss the issue of securing funding in times of austerity and cutbacks; USACE personnel concede to the fact that there are no assurances that the Congress will authorize the federal contribution to the project.</p> <p>Even if Congress approves funding for the Sutter Butte Flood Control Agency's proposed project, the Agency is dependent on obtaining the state's share of the money required to construct the project; purportedly, the majority of those funds would come from the issuance of voter-approved General Obligation (GO) bonds. GO bonds are backed by the full faith and credit of the people of California and are repaid from the state's deficit-ridden General Fund.</p>	Federal funding is dependent on Congressional authorization and appropriation. As noted, construction is also dependent on the State and SBFCA providing their local cost share of the project cost.
Patrick Porgans (Phone Call on July 30, 2013 between Mr. Porgans and Laura Whitney, USACE Project		Comment: Flood flows and the reoperation of Oroville Dam. Mr. Porgans indicated the reoperation has not been accurate and has not been in compliance with Sec 7 operation regulation. Has this been considered?	The uncertainty in hydrologic frequency is incorporated into the analysis of each alternative's project performance using risk and uncertainty methods. The operation of the reservoir is assumed to follow the existing flood control diagram and release schedule

Manger)			specified in the approved (1970) Water Control Manual. The water control manual allows for operational uncertainty. For example, the manual states "Insofar as possible, the Feather River below the Bear River should be limited to 320,000 c.f.s. The manual also states, "During very large floods releases greater than 150,000 c.f.s. may be required, as indicated by the emergency spillway release diagram, in order to minimize uncontrolled spillway discharges".
Patrick Porgans (Phone Call on July 30, 2013 between Mr. Porgans and Laura Whitney, USACE Project Manger)		Comment: This area, Sutter Basin, has not experienced a 100 year event, therefore historical flooding has perhaps not been addressed adequately.	The 1997 flood event was estimated to be greater than a 100 year event. In highly regulated streams like the Feather River, unregulated flow estimates must be used to determine the frequency of historical flood events. A detailed hydrologic analysis of historical unregulated floods at the Feather River at Oroville gage is provided in Appendix B of the March 2002 Sacramento and San Joaquin Basins Comprehensive Study. Due to reservoir storage attenuation, the frequency of the 3-day average unregulated flow is more representative of the frequency of peak regulated outflow. The January 1997 flood event was the largest flood event experienced since records began in 1902. The unregulated 3-day flow was estimated to be 244,000 cfs. Based on the flood frequency analysis, the 3-day average flow was estimated to have a 0.9% (1/110) Annual Chance of Exceedance. The unregulated 1-day flow was estimated to be 313,000 cfs. Based on the flood frequency

			analysis, the one-day flow was also estimated to have a 0.9% (1/110) Annual Chance of Exceedance.
Patrick Porgans (Phone Call on July 30, 2013 between Mr. Porgans and Laura Whitney, USACE Project Manger)		Mr. Porgans stated that this area has not seen a "standard flood" and that he fears with the project we would be allowing more water down the channel specifically from Hwy 62 to Huncut.	Although flood routings for the Standard Project Flood (SPF) are presented in the 1970 Water Control Manual, the SPF is no longer used by USACE to evaluate project performance. The proposed project does not change the hydraulic capacity of the Feather River. The levees will be fixed in place and the height will be restored to the authorized profile or existing profile. The operation of Oroville or New Bullards Bar reservoir will not change. Operational releases from the reservoir are defined by the existing flood control diagram and release schedule. These operational criteria are not related to any of the proposed project features incorporated into alternatives SB-7 or SB-8. The project features address geotechnical performance of the Feather River levee and reservoir operations are not based on geotechnical performance.
Public Meeting			
Lawrence Mentz	Mentz-1	"My concern is that if we don't get this flood thing through, during the last flood -- all the highways are really, really congested. As I recall, the highways follow the levies. They follow the levies on the west side, and they cross over points way up near Biggs. And we need the -- if we have another flood, where are the people going to go?"	Your concern is noted. Flood evacuation routes were evaluated and found to be seriously inadequate.

Lawrence Mentz	Mentz-2	“My other concern is we need money for this project.”	Federal participation is contingent on congressional funding.
Patrick Porgans	Porgans-1	“In particular, I was asking on that feasibility assessment what assurances we have that the local property owners who have a tax assessment of approximately 6.8 million a year, why they can be left holding the bag. "The bag," meaning that they can get the 40, which is a good project, but unless certain other changes are made upstream from the proposed project -- for example, the operation of the Oroville Flood Control Facilities, which is operated by the Department of Water Resources under the jurisdiction of the Corps, and unless the operation component states the plan is put into effect, they're only going to increase the risk of danger by increasing the level of protection they're speaking of. And that's reportedly talking about 200 years of protection on 41 miles of levies. And we're saying that it's a good idea, but we can't get enough information to show its economic justification, or that it will be fully-funded.”	The dam and reservoir at Oroville were constructed after the Sacramento River Flood Control Project was authorized and after the 1957 profile was established as the design standard for the system. A result of this circumstance is that the levee heights are well above the design flow that the system is intended to convey. Beyond levee height, the levees along the Feather 1 River are considerably set back from the active channel of the river, providing a floodplain that is substantially greater than most of the rivers of the Central Valley, in many places thousands of feet in width. The combined effect is that the Feather River in the study area is not limited by conveyance capacity as a significant flood-management risk.
Patrick Porgans	Porgans-2	“So if the dredge is not going to happen, and the bypass is not going to happen, and the re-op is not happening, and we don't have the assurances it will, I don't believe I can put a level confidence in this project that would assure people ultimately that they wouldn't be committing they're own demise.”	USACE and SBFCA have conducted an extensive alternatives review under both the feasibility study and the FRWLP. Oroville reoperation and other alternatives were considered. The alternatives presented best address the primary levee and flood management deficiencies in each stretch of the Feather River. River dredging does not substantially reduce flood risk because the Feather River in the study area is not limited in conveyance capacity and because dredging would not address the documented deficiencies according

			to Federal and state criteria. Comment did not necessitate change to analysis.
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PEL
JUN 25 2013

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U.S. Department of Homeland Security
FEMA Region IX
1111 Broadway, Suite 1200
Oakland, CA. 94607-4052



FEMA

June 11, 2013

Alicia E. Kirchner, Chief
Planning Division
Department of the Army
U. S. Army Engineering District, Sacramento Corps of Engineers
1325 J. Street
Sacramento, California 95814-2922

Dear Ms. Kirchner:

This is in response to your request for comments on Draft Feasibility Report and Environmental Impact Report/Supplemental Environmental Impact Statement (FR/EIR/SEIS) for Sutter Basin Pilot Feasibility Study (SBPFS).

Please review the current effective countywide Flood Insurance Rate Maps (FIRMs) for the Counties of Butte (Community Number 060017), Maps revised January 6, 2011 and Sutter (Community Number 060394), Maps revised December 2, 2008. Please note that the Counties of Butte and Sutter, State of California are participants in the National Flood Insurance Program (NFIP). The minimum, basic NFIP floodplain management building requirements are described in Vol. 44 Code of Federal Regulations (44 CFR), Sections 59 through 65.

A summary of these NFIP floodplain management building requirements are as follows:

- All buildings constructed within a riverine floodplain, (i.e., Flood Zones A, AO, AH, AE, and A1 through A30 as delineated on the FIRM), must be elevated so that the lowest floor is at or above the Base Flood Elevation level in accordance with the effective Flood Insurance Rate Map.
- If the area of construction is located within a Regulatory Floodway as delineated on the FIRM, any *development* must not increase base flood elevation levels. **The term *development* means any man-made change to improved or unimproved real estate, including but not limited to buildings, other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, and storage of equipment or materials.** A hydrologic and hydraulic analysis must be performed *prior* to the start of development, and must demonstrate that the development would not cause any rise in base flood levels. No rise is permitted within regulatory floodways.

FEMA-1

- Upon completion of any development that changes existing Special Flood Hazard Areas, the NFIP directs all participating communities to submit the appropriate hydrologic and hydraulic data to FEMA for a FIRM revision. In accordance with 44 CFR, Section 65.3, as soon as practicable, but not later than six months after such data becomes available, a community shall notify FEMA of the changes by submitting technical data for a flood map revision. To obtain copies of FEMA's Flood Map Revision Application Packages, please refer to the FEMA website at <http://www.fema.gov/business/nfip/forms.shtm>.

FEMA-1
Cont.

Please Note:

Many NFIP participating communities have adopted floodplain management building requirements which are more restrictive than the minimum federal standards described in 44 CFR. Please contact the local community's floodplain manager for more information on local floodplain management building requirements. The Butte County floodplain manager can be reached by calling Tom Fossom, Division Manager, Department of Public Works, at (530) 538-7266. The Sutter County floodplain manager can be reached by calling Douglas Gault, Director, Department of Public Works, at (530) 822-7450.

If you have any questions or concerns, please do not hesitate to call Frank Mansell at (510) 627-7191 and/or Robert Durrin at (510) 627-7057 of the Mitigation staff.

Sincerely,



Gregor Blackburn, CFM, Branch Chief
Floodplain Management and Insurance Branch

cc:

Brad Johnson, Environmental Manager, Department of the Army, U. S. Army Engineering District, Sacramento Corps of Engineers
Tom Fossom, Division Manager, Department of Public Works, Butte County
Douglas Gault, Director, Department of Public Works, Sutter County
Tim Chao/Raul Barba, State of California, Department of Water Resources, Northern Region Office
Ray Lee, WREA, State of California, Department of Water Resources, North Central Region Office
Robert Durrin, NFIP Planner, DHS/FEMA Region IX
Frank Mansell, NFIP Planner, DHS/FEMA Region IX
Alessandro Amaglio, Environmental Officer, DHS/FEMA Region IX



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105
JUL 25 2013

Alicia E. Kirchner
U.S. Army Corps of Engineers, Sacramento District
1325 J Street
Sacramento, California 95814-2922

Subject: Sutter Basin Pilot Feasibility Report Supplemental Draft Environmental Impact Statement (SDEIS), Butte and Sutter Counties, California [CEQ #20130170]

Dear Ms. Kirchner:

The U.S. Environmental Protection Agency (EPA) has reviewed the above referenced document. Our review and comments are provided pursuant to the National Environmental Policy Act (NEPA), the Council on Environmental Quality's (CEQ) NEPA Implementation Regulations at 40 CFR 1500 - 1508, and our review authority under Section 309 of the Clean Air Act.

The reach and environmental impacts of the project analyzed in the Sutter Basin Pilot Feasibility Report SDEIS are similar to those of the Feather River West Levee Project (FRWLP); however, this SDEIS supplements the FRWLP Final EIS to address additional levee improvements.

The SDEIS (p. 6-4) acknowledges that the Tentatively Selected Plan (TSP) must be evaluated pursuant to Section 404(b)(1) of the Clean Water Act in accordance with the Federal Guidelines for Specification of Disposal Sites for Dredged or Fill Materials (40 CFR 230). The SDEIS also acknowledges that the project must be the least environmentally damaging practicable alternative (LEDPA) and would include all appropriate and practicable measures necessary to minimize adverse effects on the aquatic environment. The SDEIS does not, however, demonstrate that the TSP is the LEDPA. It states that the 404(b)(1) alternatives analysis will be included in the Final EIS.

The practice of deferring, until the conclusion of the NEPA process, the disclosure of information needed for findings of compliance with the Guidelines makes it difficult for agencies and the public to provide timely and substantive input on the evaluation of alternatives, which could inform the Corps' decision making process. Integrating the section 404(b)(1) alternatives analysis into the Draft EIS alternatives analysis would afford agencies and the public a more meaningful opportunity to evaluate impacts and provide relevant and timely feedback to inform these analyses and the Corps' decision.

We have rated this SDEIS as EC-2 – Environmental Concerns-Insufficient Information (see Enclosure 1: “Summary of Rating Definitions and Follow-Up Action”) because it is unclear whether the TSP is LEDPA, and we are unable to assess the likelihood that affected waters

EPA-1

would be successfully restored. We recommend that, in the future, the 404(b)(1) alternatives analysis be included in Draft EISs.

EPA-1
Cont.

The Sutter Basin Pilot Feasibility Report Mitigation and Monitoring Plan (MMP) does not identify restoration measures, success criteria, or monitoring commitments for 3.099 acres of waters of the U.S. that would be temporarily affected by the project. We note that such information is provided in the MMP for restoration and/or creation of riparian, non-riparian, and Valley elderberry longhorn beetle habitat. We recommend that the Final EIS and MMP include commitments to actively restore temporarily affected waters of the U.S. The FEIS and MMP should identify restoration measures and success criteria, and include monitoring commitments to ensure successful restoration of these resources.

EPA-2

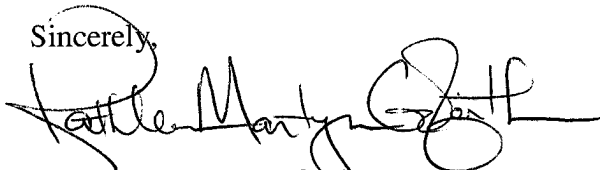
According to the MMP (p. 4-1), success criteria for riparian vegetation, oak woodland, and Valley elderberry include demonstrating at least 60 percent survival of all plantings after 20 years. Elsewhere (p. 3-9), the MMP states, "It is anticipated that at the end of the 3-year establishment period, 70% survivorship of woody species will be attained." According to the Corps Regulatory Program Uniform Performance Standards for Compensatory Mitigation Requirements (Version 8/9/2012, SPD QMS 12505.1), permittees are required to ensure equal or greater than 80 percent survivorship for vegetation and monitor annually until a minimum of 2 years of success post-irrigation. We recommend that the project be required to meet this performance standard.

EPA-3

The MMP (p. 5-2) recommends herbicide application in areas that will be planted, and identifies the herbicides that are most likely to be used. EPA recommends that the MMP state the conditions under which pesticides would be used, including actions needed to comply with California's general National Pollutant Discharge Elimination System permits for pesticide applications. Note that the California permits may require advance submission of a pesticide application plan, in some cases 90 days in advance. More information is available at http://www.swrcb.ca.gov/water_issues/programs/npdes/aquatic.shtml. You may also wish to contact Phil Isorena (Philip.Isorena@waterboards.ca.gov) at the California State Water Resources Control Board.

EPA-4

We appreciate the opportunity to review this SDEIS. Please send a copy of the Final EIS to this office (mailcode CED-2) when it is filed with EPA's electronic submittal tool, *e-NEPA*. If you have any questions, please call me at (415) 972-3521 or contact Jeanne Geselbracht, our lead NEPA reviewer for this project, at geselbracht.jeanne@epa.gov or (415) 972-3853.

Sincerely,

Kathleen Martyn Goforth, Manager
Environmental Review Office

Enclosure: Summary of Rating Definitions and Follow-Up Action
cc: Mike Inamine, Sutter Butte Flood Control Agency



United States Department of the Interior

OFFICE OF THE SECRETARY
Office of Environmental Policy and Compliance
Pacific Southwest Region
333 Bush Street, Suite 515
San Francisco, CA 94104

IN REPLY REFER:
(ER 13/0418)

Filed Electronically

29 July 2013

Brad Johnson
U.S. Army Corps of Engineers
1325 J Street
Sacramento, CA 95814

Subject: Review of the Draft Sutter Basin Pilot Feasibility Report/Environmental Impact Report/Supplemental Environmental Impact Statement (FR/EIR/SEIS), Sutter and Butte Counties, CA

Dear Mr. Johnson,

The Department of the Interior has received and reviewed the subject document and has no comments to offer.

DOI-1

Thank you for the opportunity to review this project.

Sincerely,

Patricia Sanderson Port
Regional Environmental Officer

cc:
Director, OEPC
OEPC Staff Contact: Loretta B. Sutton



EDMUND G. BROWN JR.
GOVERNOR

STATE OF CALIFORNIA
GOVERNOR'S OFFICE *of* PLANNING AND RESEARCH
STATE CLEARINGHOUSE AND PLANNING UNIT



KEN ALEX
DIRECTOR

July 30, 2013

S1

Brad Johnson
U.S. Army Corps of Engineers
1325 J Street
Sacramento, CA 95814

Subject: Sutter Basin Feasibility Study
SCH#: 2011052085

Dear Brad Johnson:

The State Clearinghouse submitted the above named Draft EIR to selected state agencies for review. The review period closed on July 29, 2013, and no state agencies submitted comments by that date. This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act.

OPR-1

Please call the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process. If you have a question about the above-named project, please refer to the ten-digit State Clearinghouse number when contacting this office.

Sincerely,

Scott Morgan
Director, State Clearinghouse

Document Details Report
State Clearinghouse Data Base

SCH# 2011052085
Project Title Sutter Basin Feasibility Study
Lead Agency Sutter Butte Flood Control Agency

Type EIR Draft EIR

Description The Feasibility Report includes an integrated EIR / SEIS. The purpose of the Sutter Basin Pilot Feasibility Study (SBPFS) is to investigate and determine the extent of Federal interest in plans that reduce flood risk to the Sutter Basin in Sutter and Butte Counties. This report: (1) assesses the risk of flooding; (2) describes a range of alternatives formulated to reduce flood risk; and (3) identifies a Tentatively Selected Plan (TSP) for implementation. The TSP consists of levee improvements to existing levees of the Sacramento River Flood Control Project extending along approximately 41 miles of the Feather River. The plan would provide higher levels of flood risk management to local communities.

Lead Agency Contact

Name Brad Johnson
Agency U.S. Army Corps of Engineers
Phone 916 557 7812 **Fax**
email inorgaard@icfi.com
Address 1325 J Street
City Sacramento **State** CA **Zip** 95814

Project Location

County Sutter, Butte
City
Region
Lat / Long 39° 8' 25.56" N / 121° 37' .9624" W
Cross Streets Numerous
Parcel No. Numerous
Township **Range** **Section** **Base**

Proximity to:

Highways Hwy 99
Airports Butte County
Railways UPRR
Waterways Feather River
Schools Numerous
Land Use

Project Issues Agricultural Land; Air Quality; Biological Resources; Archaeologic-Historic; Geologic/Seismic; Toxic/Hazardous; Water Quality; Landuse; Other Issues; Minerals; Noise; Population/Housing Balance; Public Services; Recreation/Parks; Economics/Jobs; Traffic/Circulation; Aesthetic/Visual; Drainage/Absorption; Flood Plain/Flooding; Soil Erosion/Compaction/Grading; Solid Waste; Vegetation; Water Supply; Wetland/Riparian; Growth Inducing; Cumulative Effects

Reviewing Agencies Resources Agency; Department of Conservation; Department of Fish and Wildlife, Region 2; Department of Parks and Recreation; Central Valley Flood Protection Board; Department of Water Resources; Office of Emergency Management Agency, California; Caltrans, District 3 N; Regional Water Quality Control Bd., Region 5 (Redding); Regional Water Quality Control Bd., Region 5 (Sacramento); Native American Heritage Commission; State Lands Commission

Date Received 06/13/2013 **Start of Review** 06/14/2013 **End of Review** 07/29/2013



Sacramento
Area Flood
Control
Agency

L1

July 25, 2013

Mr. Brad Johnson
Sacramento District
U.S. Army Corps of Engineers
1325 J. Street
Sacramento, CA 95814

RE: Comments on Sutter Basin Pilot Feasibility Draft Report - Draft Environmental Impact Report/Supplemental Environmental Impact Statement

Dear Mr. Johnson:

SAFCA has reviewed with much interest the Sutter Basin Pilot Feasibility Draft Report (SBPFDR). SAFCA is the local sponsor for the American River Watershed Common Features General Reevaluation Report (GRR). Our GRR and the SBPFDR have been on a parallel path and have some of the same issues.

My comments today focus on one issue - the exclusion of a Locally Preferred Plan (LPP) that includes a System Wide Improvement Framework (SWIF) to address the vegetation issue as a means of addressing the worst risk first.

In August 2012, a meeting was held on the American River Watershed Common Features GRR with representatives from the Assistant Secretary of the Army for Civil Works and USACE Headquarters. The meeting was held to figure out how to avoid the issues surrounding the vegetation, access, and encroachments on levees from holding up planning reports and the needed structural fixes to the levees for public safety. In that meeting it was generally acknowledged that a plan which proposed removal of all vegetation would likely not be implementable from a cost, environmental and public acceptance standpoint and would result in the critical risk reduction features being held up due to the vegetation issues. It was decided that the planning document would include an LPP that is consistent with the structural components of the alternative the District developed, but within an overall framework that would allow the worst risks to be addressed first. This would be achieved utilizing a SWIF to address correcting the remaining deficiencies that represent a much lower threat to public safety, such as vegetation.

SAFCA-1

The LPP would have several capital improvement components phased-in over time in a manner to address the worst risk first. The LPP would also have a component that would be a long-term plan of action, including a financing plan, addressing any remaining

SAFCA-2

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Sacramento, CA 95814-3407

encroachment, access, real-estate, vegetation, and other issues not addressed as part of the capital improvement components of the LPP for the levees covered by the planning document as part of the SWIF.

SAFCA-2
Cont.

With this in mind, SAFCA, Sutter Butte Flood Control Agency (SBFCA), and the State of California were proceeding with the idea that our planning documents would include an LPP that included a SWIF to address vegetation over time, so that public safety could be promoted and the greatest flood risk reduction to the community could be achieved first.

However, a few months ago, Colonel Leady and District staff told SBFCA, SAFCA, and the State that an LPP with a SWIF is “not policy compliant.” We were told the alternatives in the documents had to be compliant with the ETL and that an LPP with a SWIF was not considered policy compliant. This is reflected in the draft SBPFDR.

Section ES 8.1 of the SBPFDR states:

“The TSP assumes all vegetation, except grasses, will be removed from the levee and within 15 feet of the levee toe in compliance with Engineering Technical Letter (ETL) 1110-2-571, *Guidelines for Landscape Plantings and Vegetation Management at Levees, Floodwalls, Embankment Dams, and Appurtenant Structures* (Vegetation ETL). This assumption discloses the maximum potential impacts of the TSP resulting from vegetation removal. During the design phase of the project, other options with lesser impacts, including a formal Vegetation ETL variance application to allow woody vegetation on the waterside of the levee, might be available and will be considered.”

Additionally Section “3.8.2.2.2 Woody Vegetation on Levee” states:

“However, for the purpose of this feasibility study, the Sacramento District’s PDT determined that all alternatives were to be formulated and evaluated under the conservative assumption that each alternative would include necessary work, and costs thereof, for the removal of all vegetation on the levees, with the exception of grasses including 15 feet from the toe of the levee on both the landside and waterside.”

The way the policy is being implemented in the SBPFDR does not allow for the worst risks to be addressed first: it is an all or nothing approach. It significantly increases the risk that the plan will be opposed on several levels because of the vegetation component. Therefore, the way the policy is being implemented in the SBPFDR could result in increased risk to the public by delaying critical structural work.

SAFCA-3

I testified at the U.S. Senate Committee on Environment and Public Works Hearing on February 7, 2013 entitled, “Oversight Hearing on Implementation of Corps of Engineers Water Resources Policies.” At the same hearing, the Assistant Secretary of the Army (Civil Works) Jo-Ellen Darcy stated in her testimony the following:

“Each levee and its conditions must be considered in its entirety so well informed decisions for prioritizing levee safety actions can be made. The Corps policy enables levee sponsors to address the highest risk issues first.”

The Assistant Secretary of the Army testified before the Senate that Corps policy enables levee sponsors to address the highest risk first. However, the Corps is not applying the Corps policy that way in the SBPFDR.

Additionally, on July 8, 2013, the Sacramento District released the video "Levee Safety in California's Central Valley: Levee Vegetation." In THE VIDEO the Corps again states that the Corps program allows the worst risks to be addressed first. The video states:

"The Corps is working with the State and the local maintaining agencies to offer them a worst first approach. As part of our System Wide Improvement Framework, agencies can submit a plan for how they will deal with their specific levee issues over time, tackling the highest risk first and eventually coming into compliance with their vegetation, if it is not determined to be the highest risk."

An LPP with a SWIF included in the document would allow the District, the State, and SBFCA to move forward with the preparation of the SWIF component of the LPP so that these issues could be addressed in parallel with the SBPFDR with the understanding that the LPP will meet the policy and public safety objectives of the Corps, the State, and SBFCA while providing a pathway for reaching agreement on a levee vegetation management strategy.

The Corp's video itself stresses the need to have more time to address vegetation issue when it states the following:

"In 2012 research scientists and engineers from all over the world came together in Sacramento for a conference to discuss vegetation on levees. The overwhelming take-away from that conference was simply that we need more information to make educated decisions about how to move forward."

The Corps should not be promoting the idea of a SWIF as a mechanism to address the concept of "worst first" publically and to Congress, but then deny the use of it in practice.

SAFCA-4

I respectfully submit these comments and request that the Corps follows the policy it is promoting publically and allow an LPP with a SWIF component to address the controversial vegetation issue, and other difficult but low risk encroachment and access issues over time. An alternative solution may be to include the SWIF components as part of the alternatives presented in the SBPFDR.

SAFCA-5

Sincerely,



Richard M. Johnson
Executive Director
Sacramento Area Flood Control Agency

1 29 July 2013
 2 U.S. Army Corps of Engineers
 3 Sacramento District
 4 1325 J Street
 5 Sacramento, CA 95814
 6

7 **Subject: Comments and Confidence Rating Regarding the Sutter Basin Pilot Feasibility Draft Report¹**
 8

9 Sent to the **Attention of DeDe Cordell**, Public Information Officer, U.S. Army Corps of Engineers DeDe.Cordell@usace.army.mil
 10

11 **Preface:** The following comments have been limited due to time constraints, delayed-public notification by lead agencies;
 12 inability of project sponsors to provide answers to critical questions pertaining to the uncertainty of sources of funding and or
 13 project feasibility. The failure of the project sponsors and/or the USACE to provide such critical information. The ability to
 14 ascertain answers to such basis questions raised a series of “red flags”; a problem further impeded and complicated by the
 15 unavailability of federal government personnel to respond to questions; purportedly the result of Congressional cutbacks.
 16 Therefore, the comments submitted herein should be viewed as preliminary and limited.
 17

18 **Introduction:** Thank you for the opportunity to comment on the U.S. Army Corps of Engineers’ (USACE) **Sutter Basin Feasibility**
 19 **Study.** As per DeDe Cordell’s directive, this comment letter is being emailed to you, as the assigned project manager was out of
 20 the office today (flex day); and none of the USACE personnel assigned to the project were available last Friday, due to cutback.
 21

22 The following comments are being submitted by *Patrick Porgans & Associates* on behalf of *Planetary Solutionaries*, a public-
 23 interest nongovernmental organization. Please be advised that we submitted comments on the USACE’s draft Environmental
 24 Impact Statement (DEIS) and attended federal, state and regional public meetings expressing support for the study and the
 25 proposed flood control plan(s) sponsored by the Sutter Butte Flood Control Agency (Agency).
 26

27 P&A has a longstanding involvement in flood protection and management issues in California and has taken proactive
 28 measures to ensure that the “responsible agencies” with jurisdiction in such matters, perform accordingly. P&A’s clients also
 29 supported the state’s Central Valley Flood Protection Board’s adopted Flood Plan; approved by the Board in June 2012, as
 30 required by Senate Bill 5. However, as referenced in our comments on the USACE’s DEIS, the state Board has since abandoned
 31 or opted to shelve three major components of the state’s Plan that are critical to the future success of the Agency’s proposed
 32 Plan:
 33

- 34 1. Reoperation of the SWP Oroville Dam and Reservoir to provide more flood control space during the rainy period.
- 35 2. Widening the Cherokee Canal to allow a portion of the floodwater releases from the dam to be diverted in the
 36 upper reaches of the Feather River as was historically the case.
- 37 3. Although the client does not advocate dredging the channel removal of this option also limits the tools in the box.
 38

39 P&A took the initiative to interact and actively participate in the public-hearing process, wherein it raised questions and
 40 expressed concerns regarding the feasibility of the proposed project, in the absence of the modifications made by the Board
 41 subsequent to approving the state’s Plan. In addition, the uncertainties regarding the ability of the State to get voter approval
 42 of billions of dollars in additional General Obligation (GO) bonds for flood control projects. As it stands now, based on the
 43 documentation provided by the respective government agencies, we place very limited confidence in the “probability
 44 assurances” related to the State and local sponsors to fund the respective plans if turned down by voters. Furthermore, in the
 45 event funding shortfalls or operational and management modifications at Oroville, including a viable bypass are unsuccessful, it
 46 could result in the local sponsors “holding the bag”.
 47

48 **Position Statement:** As stated in writing and at meetings we acknowledge and support the *Sutter Basin Feasibility Study* and all
 49 of the components contained in the Sutter Butte Flood Control Agency’s plan to provide the much needed flood control
 50 protections for Yuba City, Live Oaks, Gridley and Biggs. However, neither the Feasibility Study nor the proposed flood control
 51 plan (Locally Preferred Plan (LLP/Alt.-8) provide assurances that the proposed flood control protections will be effective nor has

¹ U.S. Army Corps of Engineers et al, Sutter Basin, California: **Sutter Basin Pilot Feasibility Draft Report—Draft Environmental Impact Report/Supplemental Environmental Impact Statement**, June 2013.

1 the local sponsors, Sutter Butte Flood Control Agency and the state Central Valley Flood Control Protection Board, identified or
2 secured the funds required to construct either the Agency's or the State's proposed Flood Plans.

3
4 **CATO Institute Essay Critical of USACE Performance:** In March 2012, the **CATO Institute** issued a report stating,

5
6 *The Corps has been greatly mismanaged over the decades, with problems ranging from frequent cost*
7 *overruns on projects to major engineering failures that contributed to the disaster of Hurricane Katrina. In*
8 *addition, the dominance of special-interest politics on the agency's activities has resulted in it supporting*
9 *many wasteful projects.*

10
11 *While Corps [USACE] projects are supposed to be based in detailed economic and environmental analyses,*
12 *political pull often determines the agency's priorities. In an investigation of the Corps in 2003, the Washington*
13 *Post noted that "powerful members of Congress dictate the selection, pace, and price tag for major projects."*
14 *While levee upgrades in central New Orleans were stalled prior to Hurricane Katrina, dubious projects*
15 *elsewhere in Louisiana and other states moved ahead.*

16
17 ***Wasteful Projects and Faulty Analyses:*** *The Army Corps is supposed to do a careful and detailed analysis of*
18 *proposed projects to ensure that the benefits will outweigh the costs. However, the Corps has often pursued*
19 *projects based on analyses that were theoretically flawed, had faulty data, or had been deliberately*
20 *manipulated.*²

21
22 **Planetary Solutionaries Shares CATO's Concerns:** Although, it is not P&A's intent to be critical of the USACE (Corps),
23 our clients shares the concerns reference heretofore from the CATO report; however, we are placing emphasis on the
24 following factors that are prefaced on facts ascertained by Porgans & Associates (P&A) for prior clients.

- 25
26 I. P&A conducted an independent fact-finding analysis of the USACE's and the California Department of
27 Water Resources (DWR) judiciary and regulatory relationship subsequent to the 1986 and 1997 flood
28 events; both of notable magnitude. In each event, P&A was actively monitoring the flood-control
29 operation of all USACE "section 7 reservoirs" in the Sacramento, American, and Feather River Basins; a
30 component of Planetary Solutionaries Section 7 Reservoir Monitoring Program.
- 31
32 II. In each of those events, government records confirm the fact that DWR failed to operate the federally
33 funded component of the State Water Project's Oroville Dam and Reservoir in accordance with the
34 USACE's prescribed rules and regulations. As you know, the USACE's regulations for this "section 7
35 reservoir" requires DWR, as the operator, to be compliant with flood control operations; and during
36 flood events that it evacuate encroachments within the flood storage space and to make flood releases
37 as prescribed in the USACE operating manual and Flood Control Diagram pertinent to Oroville Dam
38 operations. However, in each event prior to the deluge, P&A provided the USACE personnel, responsible
39 for overseeing the operation of section 7 reservoirs, with information it already had in its files.
40 Documents that confirmed DWR was illegally retaining water in the designated flood storage space, in
41 violation of USACE operational requirements; while the impending weather and flooding conditions
42 would have deemed otherwise. At P&A's insistence USACE personnel did formally notify DWR it had to
43 release the unauthorized water it was holding in the space reserved for flood storage; however, it was
44 too much, too late. Lastly, federal flood control laws do not have enforcement provisions; compliance
45 with flood control laws and regulations are left in the hands of the section 7 operators; such as DWR.
- 46
47 III. Subsequent to the warnings, which went unheeded, DWR resorted to increased flood water releases, in
48 excess of USACE requirements. In DWR's own publications, it states that it is tempting to hold back on
49 flood water releases as it enables DWR to generate more electrical energy by moving the water through

² CATO Institute, Chris Edwards, Cutting the Army Corps of Engineers, March 2012, p. 1. <http://downsizinggovernment.org/usace>

1 the turbines and helps to ensure water for its contractors.³ Eighty-five percent of DWR's budget is
2 purportedly obtained from revenues received from water and energy contractors. SWP contractors per
3 se are not required to pay for the flood control component of the Oroville facilities; nor do they pay to
4 maintain the Feather River which is used as a canal to move water to SWP contractors in central and
5 southern California.
6

7 IV. It is important to keep in mind the purpose and intent of publicly funded flood control projects and
8 plans; reduce or prevent flood damages. The Agency and State Flood Plans as proposed are rife with
9 uncertainties that will only heighten the risk of flood damage, if all of the viable options are not inclusive.
10 Compliance with existing flood control laws and the efficient management of the flood control system
11 currently in place are critical.
12

13 Government has a mandate to ensure that flood control projects are designed, built, operated and
14 maintained in accordance with the prescribed laws, rules, regulations, manuals and Memoranda
15 agreements and as a means to ensure that flood control projects are designed, built, operated and
16 maintained accordingly; the record indicates otherwise.
17

18 Neither the USACE nor DWR have the expressed right to take any action to impede, obstruct, compromise or
19 jeopardizes the intended designed, maintenance or operational flood control facilities and or conveyances in a
20 manner that is incongruent with the objectives and or integrity of the Flood Control System; unless, of course, an
21 event of magnitude required actions to justify such an action.
22

23 **Unfortunately, P&A has to terminate its comments, because they are due today.**
24
25
26

27 P&A apprized the USACE, Sutter Butte Flood Control Agency, and the state's Central Valley Flood Control Protection Board
28 personnel of the aforementioned issues; unfortunately, none of whom could provide specific answers to questions that are
29 critical to the success of the proposed action to provide additional flood control protections in the basin.
30

31 **Feasibility Report - Funding Questions Remain Unanswered:** On behalf of its client, P&A attended federal, state and regional
32 meetings to discuss the issue of securing funding in times of austerity and cutbacks; USACE personnel concede to the fact that
33 there are no assurances that the Congress will authorize the federal contribution to the project.
34

35 Even if Congress approves funding for the Sutter Butte Flood Control Agency's proposed project, the Agency is dependent on
36 obtaining the state's share of the money required to construct the project; purportedly, the majority of those funds would
37 come from the issuance of voter-approved General Obligation (GO) bonds. GO bonds are backed by the full faith and credit of
38 the people of California and are repaid from the state's deficit-ridden General Fund.
39

40 Currently, the principle on California's GO bond indebtedness is around \$80 billion; with interest payments it is estimated to be
41 around \$160 billion; however, there is another \$50 billion in GO bonds that have been authorized but have yet to be sold.
42

43 The State of California, more appropriately, the taxpayers, we asked to approve the State's proposed \$17 billion flood plan, a
44 significant portion of which is purportedly from the approval and issuance of General Obligation Bonds, which are repaid by
45 Californians from tax revenues collected in the state's General Fund.
46

47 **Narrative:** Since 1980 Porgans & Associates has been actively engaged in conducting studies and developing plans for clients
48 residing within the Feather River Basin in an effort ensure that the responsible government entities are operating the
49 respective flood control facilities and Sacramento Flood Control System within the region in accordance with prescribed flood
50 control regulations, land use requirements, and protection of listed aquatic and terrestrial species.
51

³ California Department of Water Resources, Bulletin 199, *California Flood Management: An Evaluation of Flood Prevention Programs*, September 1980, p. 33.

1 During that time, P&A completed 12 Fact-Finding Reports pertaining to flood regulations, project operations and damages
2 associated with historical and recent flood events within the Feather River Basin. **“Since 1950, 19 flood events in the basin
3 have required extensive flood fighting, and the flood of 1955 resulted in 38 deaths”**,⁴ according to the USACE.
4

5 Government data, obtained via the Freedom of Information Act and the California Public Records Act, attest to the fact that the
6 “responsible” government entities have failed to operate existing authorized flood control facilities in compliance with federal
7 flood control laws, rules and regulations. In addition, the official records will attest to the fact that flood control protections
8 provided heretofore, such as the construction of levees on the west side of the Feather River, which were completed in 1957 as
9 a part of the federally authorized Sacramento Flood Control Project; and construction of the State Water Project’s Oroville Dam
10 and Reservoir flood control facilities, which became operable in 1967, have exacerbated flooding and flood damages
11 downstream from the City of Oroville.
12

13 **USACE Mission:** *Deliver vital public military engineering services; partnering in peace and war to strengthen
14 our Nation’s security, energize the economy and reduce risks from disaster.*

15 **USACE Vision:** *Engineering solutions for our Nation’s toughest challenges.*⁵
16
17

18 **Concerns Regarding the Adequacy, Effectiveness and/or Feasibility of Funding the Proposed Flood Protections:**

19 **Chapter 8: Recommendations**

20 *This chapter describes the Items of Cooperation for a Structural Flood Risk Management (Single
21 Purpose) Project that will be specifically authorized.*

22 *I [William J. Leady, P.E., Colonel, U.S. Army, District Engineer] recommend that the Tentatively
23 Selected Plan (Alternative SB-8) be authorized for implementation as a Federal project with such
24 modifications thereof as in the discretion of the Commander, U.S. Army Corps of Engineers, may be
25 available. The estimated first cost of the Tentatively Selected Plan is \$748,110,000. The estimated
26 Federal cost is \$281,786,000 and the estimated non-federal cost is \$466,324,000. Federal cost
27 participation is limited to the Federal Cost of the NED Plan (Alternative SB-7).⁶
28
29
30
31*

32 The following are excerpts from U.S. Army Corps of Engineers publications pertaining to the Study/Plan:
33

34 *The focus of the Sutter Basin Pilot Feasibility Study is to recommend a plan for flood damage
35 reduction, ecosystem restoration, and recreation for the communities of Yuba City, Live Oak,
36 Gridley and Biggs. The study is located within the boundaries of the Sacramento River Flood
37 Control Project in Sutter County and includes the Sacramento, Feather and Bear Rivers as well as
38 the Sutter and Tisdale Bypasses.”
39*

40 *The Feasibility Cost Sharing Agreement was signed in March 2000. The non-Federal sponsors are
41 State of California, Central Valley Flood Protection Board and the Sutter-Butte Flood Control
42 Agency. Sutter County is the local sponsor with an agreement with the State of California. The
43 current estimated cost for the complete Feasibility Study is \$8.556 million.
44*

⁴ U.S. Army Corps of Engineers et al, Sutter Basin, California: **Sutter Basin Pilot Feasibility Draft Report—Draft Environmental Impact Report/Supplemental Environmental Impact Statement**, June 2013.

⁵ <http://www.spk.usace.army.mil/Missions/CivilWorks/Sutter.aspx>, page 1.

⁶ *Ibid.*, **Sutter Basin Pilot Feasibility Draft Report**, p. 8-3.

1 *This investigation is being conducted under the authority provided by the Energy and Water*
2 *Development Appropriations Act, 1999. The project was originally authorized by the Flood Control*
3 *Act of 1962 (Public Law 87-874).⁷*
4

5 **Study Purpose**

6
7 *The purpose of the Sutter Basin Pilot Feasibility Study is to investigate and determine the extent of*
8 *federal interest in plans that reduce flood risk to the Sutter Basin in Sutter and Butte Counties. The*
9 *cost of the study is being shared by the U.S. Army Corps of Engineers, the Sutter Butte Flood Control*
10 *Agency and the California Central Valley Flood Protection Board. The study's draft feasibility report*
11 *assesses the risk of flooding; describes a range of alternatives formulated to reduce flood risk; and*
12 *identified a tentatively selected plan for implementation. Currently, approximately 96,600 people*
13 *and 26,783 structures are at high risk of flooding in the Sutter Basin communities of Yuba City, Live*
14 *Oak, Gridley and Biggs. Since 1950, 19 flood events in the basin have required extensive flood*
15 *fighting, and the flood of 1955 resulted in 38 deaths.*
16

17 **The Tentatively Selected Plan**

18
19 *A U.S. Army Corps of Engineers feasibility study identifies a variety of potential solutions to reduce*
20 *the flood risk and recommends a plan that provides the most benefits. The Corps' tentatively selected*
21 *plan for the Sutter Basin consist of improvements to existing levees extending along 41 miles of the*
22 *Feather River from the Thermalito Afterbay below Oroville Dam to Laurel Avenue just south of Yuba*
23 *City (for a map of the tentatively selected plan, see reverse). This plan would significantly reduce*
24 *flood risk for 90,000 residents of Yuba City, Live Oak, Gridley and Biggs. The cost of the tentatively*
25 *selected plan is estimated at \$748 million. Completing the project would prevent as much as an*
26 *estimated \$33 million in flood damage a year on average.*
27

28 **Next Steps**

29
30 *The Sutter Basin Feasibility Pilot Study draft report, draft environmental impact report and*
31 *supplemental environmental impact statement are published for public review and comments*
32 *through July 29, 2013. Comments will be addressed in a final feasibility report and environmental*
33 *impact statement, scheduled to be complete and submitted to Corps headquarters for final approval*
34 *in December 2013.⁸*
35

36 **3.10 The Tentatively Selected Plan**

37
38 *The multi-objective comparison and assessment between the NED Plan and LPP was completed.*
39 *Both the NED Plan and the LPP would provide significant benefits that exceed their costs. While the*
40 *NED Plan is more efficient than the LPP, both plans are efficient. Both the NED Plan and the LPP*
41 *are define as separable hydrologically because they have a separate residual 1% ACE floodplains*
42 *with resulting distinct economic benefits.*
43

44 *The LPP is supported by the local sponsors SBFCA and CVFPB, and has received ASA (CW)*
45 *approval with a NED cost share cap.*
46

47 *In a multi-objective context that equally emphasizes the objectives of flood risk management and*
48 *reducing residual risk to public and life safety across all planning criteria and accounts, the LPP*

⁷ U.S. Army Corps of Engineers, Sacramento District, Sutter Basin Feasibility Study,
<http://www.spk.usace.army.mil/Missions/CivilWorks/Sutter.aspx>, page 1.

⁸ U.S. Army Corps of Engineers, Sacramento District, **Sutter Basin Feasibility Study**, 22 July 2013, p. 1.

1 *(Alternative SB-8) is recommended as the Tentatively Selected Plan [TSP] at the NED Plan limit of*
2 *Federal cost participation. See Figure 3-14.*
3

4 *7.1 Tentatively Selected Plan Identification*
5

6 *The plan identified as the TSP is the Locally Preferred Plan (LPP), Alternative SB-8. This plan is*
7 *justified and has a benefit to cost ratio of 1.9 to 1.0. Further, the LPP will comply with California*
8 *Government Code requirements for a 200-year level of flood protection for urban and urbanizing*
9 *areas by 2025.*

10
11 *The Assistant Secretary of the Army for Civil Works (ASA(CW)), by Memorandum dated May 7,*
12 *2013, has approved an exception to National Economic Development (NED) policy for Federal*
13 *government to recommend a LPP over the NED Plan, allowing recommendations of the LPP as the*
14 *TSP at NED level Federal participation cost share.*
15
16

DRAFT

Mentz and Porgans
Verbal Comments

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SUTTER BASIN FEASIBILITY STUDY

U.S. ARMY CORPS OF ENGINEERS

PUBLIC MEETING
1425 Veterans Memorial Circle
Yuba City, California 95993

COMMENTS OF THE PUBLIC

JULY 22, 2013

Reported By: Karen S. Challe, CSR No. 8244, RPR

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APPEARANCES:

PAGE:

LAWRENCE MENTZ
454 Lynn Way
Yuba City, California 95991
(530) 671-6505

3

PLANETARY SOLUTIONARIES
BY: PATRICK PORGANS, Solutionist
222.planetarysolutionaries.org
(916) 833-8734

8

1 BE IT REMEMBERED, that on Monday, July 22, 2013,
2 commencing at the hour of 5:00 P.M., at the Sutter County
3 Veteran's Hall, 1425 Veterans Memorial Circle, Yuba City,
4 Sacramento, California, before me, KAREN S. CHALLE, a
5 Certified Shorthand Reporter in and for the county of
6 Sacramento, state of California, a public meeting was held
7 and the following comments were made by the public:

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LAWRENCE MENTZ

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454 Lynn Way

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Yuba City, California 95991

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(530) 671-6505

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MR. MENTZ: We've got to get the message out,
get the information to the people. We have a lot of
low-information people. The low-information voters, they
get everything from their cell phone. I'm suggesting that
they come up with some short, quick videos showing the
effects of the before and after that we've had in the
past, and what they're proposing to do, and ask the
citizens to -- "Hey, this is what's going on. Contact
your Congressman and tell them you support this."

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See? The low-information voter, we're trying to
get across to the 70-percent of the population that
doesn't subscribe to the newspapers, see? They can get

1 all their news from NBC, and that's all they get. And
2 they don't get any more. Okay? So what I'm looking at is
3 a way to convey this information to low-information
4 voters. I think a small video would do the job.

5 My example for you would be to look at the Napa
6 Auto Parts store, which just introduced a whole new series
7 of short-segment videos that teach people how to repair
8 cars and troubleshoot things. It works great. We can do
9 the same thing and apply it to flood awareness here.

10 My concern is that if we don't get this flood
11 thing through, during the last flood -- all the highways
12 are really, really congested. As I recall, the highways
13 follow the levies. They follow the levies on the west
14 side, and they cross over points way up near Biggs. And
15 we need the -- if we have another flood, where are the
16 people going to go? We have no way to get out of this
17 area. And that's my thing. And all I can think about
18 saying then is we have no way to get traffic flow. The
19 flow of traffic being two-lane roads. They get congested
20 with refugees, people that are displaced, the traffic.
21 That is all recorded around the flooded areas. And the
22 trucks -- the big trucks that always have right-of-way.

Mentz-1

23 And let me tell you, it took -- I worked at
24 Beale Air Force Base back in '86 and '87. I lived in Yuba
25 City. It took me an average of two and a half hours to

1 get home at night, and two hours to get to work in the
2 morning. And I eventually ended up living at the base
3 until the flood water subsided. Roads were open enough
4 for employees to travel, leaving my family behind. And so
5 that's all. I don't know what else.

6 My other concern is we need money for this
7 project. A project like this costs bucks. Everything
8 goes into overrun. Overrun sucks the crap out of
9 everybody. Everybody gets sticker shock, like buying a
10 new truck, you know. All the rivers in Sacramento are
11 used for both drinking water and recreation and sewage.
12 Isn't that wonderful? To be drinking your water
13 downstream from Sacramento? What I'm suggesting is that
14 the projects that have been done along the Great Lakes --
15 okay. The Great Lakes is a controlled body of water,
16 doesn't get a lot of rivers into it. And what happens,
17 they were using the rivers for the same thing we're using
18 our rivers for. And the lake was getting algae-infected.

19 What they did is, all the communities around the
20 area had reverse-sewage systems. They pumped it inland
21 and let it flow to the lake through manmade marshes;
22 cleaned the water up extensively better than any treatment
23 plant could ever do. Let the plants and sunlight do it.
24 If we could come up with a project like that for Feather
25 River, for say, Yuba City, we could sell it on the idea

1 that it's helping Sacramento's drinking water, by making,
2 by protecting the flood plain, controlling what we do with
3 that land between levies. It just sits there, right? All
4 those weeds, poison oak and vultures. You know, we could
5 make a natural flood plain, like nature had before white
6 man moved in here. You know, let the marshes do the water
7 cleaning. I don't know what else to say about that.

8 We need money to find some -- to be -- get a way
9 to get money. If we get the environmentalists in the back
10 of that, it would just flow a lot easier, you know?
11 That's all.

12 The main city that they did this project on,
13 this initial one, was Michigan. I have personally
14 surveyed it. It's a wonderful project. I walked parts of
15 it. Milwaukee's got one on the other side of the lake.
16 The only one not in the game is Chicago, because Chicago
17 does whatever they want to do.

18 The last little bid to get more funding for our
19 project, to get more funding, once you get the
20 environmentalists on the project, money falls into it. It
21 does. Look how the -- what Bay, Delta Bay, Delta
22 Conservatory -- everybody feeds out of the structure,
23 water transfers down to southern California. If that
24 worked for Yuba City, they could use it for larger
25 metropolitan areas, such as, for example, Yolo By-Pass for

1 Woodland and Davis. And forget all that water that flows
2 to southern California. They're drinking our sewage.

3 (End of comments by Mr. Mentz)

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PLANETARY SOLUTIONARIES
BY: PATRICK PORGANS, Solutionist
222.planetarysolutionaries.org
(916) 833-8734

MR. PORGANS: I'm Patrick Porgans. I'm here from both Porgans and Associates and Planetary Solutionaries. And I was here to comment on the Feasibly Assessment for the Proposed Feather River Project.

Yes. And I discussed the matter with several of those members of the Corps present. And although they were trying to be helpful, they had -- and in light of the time frame -- it was short -- they couldn't provide me with the interest to the questions that I had proposed for them.

In particular, I was asking on that feasibility assessment what assurances we have that the local property owners who have a tax assessment of approximately 6.8 million a year, why they can be left holding the bag. "The bag," meaning that they can get the 40, which is a good project, but unless certain other changes are made upstream from the proposed project -- for example, the operation of the Oroville Flood Control Facilities, which is operated by the Department of Water Resources under the jurisdiction of the Corps, and unless the operation

Porgans-1

1 component states the plan is put into effect, they're only
2 going to increase the risk of danger by increasing the
3 level of protection they're speaking of. And that's
4 reportedly talking about 200 years of protection on 41
5 miles of levies.

6 And we're saying that it's a good idea, but we
7 can't get enough information to show its economic
8 justification, or that it will be fully-funded. And
9 that's because the state of California gets -- some of
10 this project would have to be paid with general bond
11 funding from California. And that requires a vote of the
12 people. And as I checked -- explained to the gentleman
13 that were discussing the financial feasibility assessment,
14 80 billion dollars of general operations bonds are already
15 out there, authorized, and that there's another
16 70-some-odd bills waiting to be issued that's are to be
17 approved. And 20-percent of what's already been issued is
18 water and water-related bonds, including flood
19 protections.

20 So we're saying we don't have enough
21 information, nor does anyone, after reading thousands of
22 pages of documents provided us, with the assurances of the
23 sources of revenue that they'll need to complete the
24 project. So what it means is that if this project, which
25 I was -- I support the Feather River West Levy Project

Porgans-1
Cont.

1 which bond controlled agencies put in effect, but if they
2 don't change the operation of Oroville, nor provide more
3 flood protection -- because every major flood that has
4 occurred since '55, there is about -- is the result of
5 government projects. And we're basing this on
6 government-zoning issues.

7 When they built those levies, they stopped the
8 natural by-flow of -- by-pass of flow of water that would
9 go into the Sutter Butte Basin. So now these big floods
10 we've had in '55, '64 and '86, '97, they're the result of
11 building the levy that's still there, and probably it
12 initially causes flooding on the east side of the river.
13 And those people there, some of which have never been
14 compensated and have no flood protection above Honeycut
15 Creek.

16 So what I'm saying here is that there was a
17 by-pass proposed in the State plan. And that's the
18 Central Valley Flood Control Protection Plan dated
19 June 2012. That provided for reoperation in Oroville, as
20 we did it on the American River at Folsom back in '86.
21 However, that's been taken off the scene. And there also
22 was a proposed order to put in by-pass or expansion of a
23 canal for more flood waters to go down through the
24 by-pass, avoiding having to go into the mainstem of the
25 Feather River, which would relieve the damage that we

1 experienced in '86 and '97.

2 In '86, it cost the taxpayers one billion
3 dollars for damage, loss of -- damage that was filed
4 against the State when the -- that flood occurred there.
5 I was involved in that litigation as a provider of
6 information. Same with the '97 flood.

7 So what we're looking at here is the third
8 alternative provided was a dredge out the river. The
9 river is what they call an arm, and is requiring, it's
10 compensated, and it doesn't do much for salmon-spawning
11 habitat. The dam stops all new recruitment of aggregate
12 material. So it's contributed to the endangered species
13 as losses, so forth and so on.

14 Unfortunately, when DWR violates federal flood
15 control, those litigations of Oroville have to be kept in
16 mind that the flood control protection is paid for by the
17 public taxpayers, now by the bond, by the people of
18 California, to two bonds, which cost them as much money as
19 it is to borrow. If we've got 80 billion dollars out in
20 bond, we've got another 80 billion on it. That is a
21 significant amount of money to have to be paid -- repaid.

22 So if the dredge is not going to happen, and the
23 by-pass is not going to happen, and the re-op is not
24 happening, and we don't have the assurances it will, I
25 don't believe I can put a level confidence in this project

Porgans-2

1 that would assure people ultimately that they wouldn't be
2 committing they're own demise.

Porgans-2
Cont.

3 (End of comments by Mr. Porgans.)
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