

**Meeting of the Central Valley Flood Protection Board
December 20, 2013**

Staff Report – Board Requested Action

**Transfer of Operations and Maintenance Responsibilities
for the Feather River Setback Levee at Star Bend Project
to Levee District No.1, Sutter County**

1.0 – ITEM

Consider adoption of Central Valley Flood Protection Board (Board) Resolution 2013-21 (Attachment B) which:

- accepts, from the USACE, responsibilities to operate and maintain the Feather River Setback Levee at Star Bend,
- receives, from the U.S. Army Corps of Engineers (USACE), the revised *Supplement to Standard Operations and Maintenance Manual, Sacramento River Flood Control Project, Unit No. 144, West Levee of Feather River from North Boundary of Levee District 1 to North Boundary of Maintenance Area 3 (previously Reclamation District No. 823), USACE, Sacramento District, June 2013,*
- receives, from the USACE, final project as-built drawings, originally prepared by Levee District 1,
- and transfers (via draft letter, Attachment C) responsibilities to operate and maintain the Star Bend Setback Levee to Levee District No. 1, Sutter (LD 1), along with the above documentation.

2.0 – PROJECT PROPONENT

LD 1 proposed the Feather River Setback Levee at Star Bend, and has operated and maintained (as the local maintaining agency (LMA)) Unit No. 144 of the Sacramento River Flood Control Project in accordance with the *Supplement to Standard Operation and Maintenance Manual, Sacramento River Flood Control Project, Unit No. 144, West Levee of Feather River from North Boundary of Levee District No. 1 to North Boundary of Reclamation District No. 823, Sacramento District, Corps of Engineers, U.S. Army, August 1955.*

3.0 – PROJECT LOCATION AND DESCRIPTION

The project is located along the west (right) bank levee of the Feather River at Star Bend between River Mile 17 and River Mile 18, south of Yuba City, and northeast of the intersection of State Route 99 and Garden Highway, in Sutter County (Attachment A). The project included removal of approximately 4,500 linear feet of existing project levee, construction of 3,400 linear feet of setback levee with slurry cutoff wall, and modification of two existing irrigation facilities.

4.0 – AUTHORITY OF THE BOARD

- California Water Code, Division 5, Part 2, Chapter 3, § 8350 and § 8370
- California Code of Regulations, Title 23 (CCR 23)
- Rivers and Harbors Act of 1899, Title 33 United States Code, § 408 (Section 408)
- Standard Operation and Maintenance Manual for the Sacramento River Flood Control Project (Revised), Sacramento District, USACE, May 1955
- Supplement to Standard Operation and Maintenance Manual, Sacramento River Flood Control Project, Unit No. 144, West Levee of Feather River from North Boundary of Levee District No. 1 to North Boundary of Reclamation District No. 823, Sacramento District, Corps of Engineers, U.S. Army, August 1955.

5.0 – PROJECT APPROVAL, PERMITTING, CONSTRUCTION, AND DOCUMENTATION

LD 1 as lead agency under the California Environmental Quality Act (CEQA) prepared Draft and Final Environmental Impact Reports (DEIR, FEIR) in February and May 2007 respectively. LD 1 approved (by Resolution 07-03) the FEIR, Mitigation Monitoring and Reporting Program (MMRP), findings, and a Statement of Overriding Considerations, and filed a Notice of Determination with the Sutter County Clerk on May 24, 2007.

The Department of Water Resources (DWR) and LD 1 executed an Early Implementation Project (EIP) Funding Agreement on June 16, 2008 to fund the State share of project costs. State funding was provided by the California Disaster Preparedness and Flood Prevention Bond Act of 2006; and the California Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006. The approximately 20 percent local share of project costs were funded through LD1 and its local cost sharing partners.

33 U.S.C. Section 408 (Section 408) provides authority to the Secretary of the Army to grant permission for alteration or modification of U.S. Army Corps of Engineers (USACE) projects when in the judgment of the Secretary such alteration or modification will not be injurious to the public interest and will not impair the usefulness of the project.

On November 14, 2008 the Board, pursuant to Section 408, requested on behalf of LD 1, permission from the USACE to alter a portion of the SRFCP, and gave assurances to the USACE that LD 1 would accomplish this alteration in a manner that would not be injurious to the public interest and would not impair the usefulness of the SRFCP. The Board also transmitted LD 1's Project Summary Report, pursuant to Section 408, to the USACE along with its request letter (included in Attachment D).

The Board conducted a public hearing on April 17, 2009 and approved Permit No. 18191. The permit (included in Attachment D) was issued to LD 1 on May 11, 2009, conditioned on receipt of USACE Section 408 approval, and on June 1, 2009 the USACE Director of Civil Works approved the Board's Section 408 request, and LD 1's Safety Assurance Review Plan. The USACE Sacramento District granted permission to alter the SRFCP on June 16, 2009, as it had determined that such alteration would not be injurious to the public interest and would not impair the usefulness of the project works. On July 20, 2009 the USACE transmitted additional conditions for performing the simultaneous degrade of the existing levee while constructing the setback levee. Board staff incorporated all conditions of USACE approval and permission by reference into the permit.

LD 1 substantially completed simultaneous degrade of the existing levee and construction of the setback levee by fall 2009 and, in cooperation with two local irrigation system operators, constructed necessary modifications to adjoining irrigation facilities to accommodate the new setback levee alignment. Encroachment permits 18437 and 18438 were issued, separately from the setback levee construction permit, to Tudor Mutual Water Company and Volcano Vista Farms respectively to relocate, to operate, and maintain their irrigation encroachments. Inspection of these encroachments will be conducted by LD 1, DWR on behalf of the Board, and the USACE under their regular operations, maintenance, and inspection authorities.

On December 3, 2010 the Board and LD 1, as a condition of the EIP Funding Agreement, executed an Operation, Maintenance, Repair, Replacement, and Rehabilitation (OMRRR) Agreement (Attachment E) for the setback levee project. The OMRRR (Section 1.C.4) required that LD 1 submit a long-term management plan for the

vegetation planting area within the enlarged floodplain at Star Bend to the Board for its approval.

In accordance with guidelines of the USACE Engineering Regulation ER 1110-2-401 *Operation, Maintenance, Repair, Replacement, and Rehabilitation Manual for Projects and Separable Elements Managed by Project Sponsors* LD 1 submitted a revised *Supplement to Standard Operation and Maintenance Manual, Sacramento River Flood Control Project, Unit 144, West Levee of Feather River from North Boundary of Levee District No. 1 to North Boundary of Maintenance Area No. 3 (formerly Reclamation District No. 823), U.S. Army Corps of Engineers, Sacramento District, June 2013* (hereafter referred to as SSOMM, Attachment I), along with project as-built drawings (Attachment J), a Construction Completion Report, a Flood Safety and Preparedness Plan, and a Vegetation Maintenance and Monitoring Plan (Attachment G) for the completed project to Board staff on July 24, 2012. Board staff subsequently transmitted these documents to the USACE.

After meeting with LD 1 to inspect the completed project, Board staff reviewed all LD 1 submittals and on October 23, 2012 notified both USACE Sacramento District and LD 1 by letter that it had determined that the project:

- was constructed in accordance with final (100 percent) plans and specifications,
- met all Board permit conditions (including all USACE conditions incorporated into the Board permit), and
- was compliant with the Board's California Code of Regulations, Title 23.

On July 18, 2013 the USACE Sacramento District informed Board staff by letter (Attachment F) that it had:

- completed its review of the LD 1 submittals,
- determined that the improvements were constructed in accordance with the final (100 percent) plans and specifications,
- accepted the Star Bend Setback Levee project as part of the SRFCP,
- transmitted the revised SSOMM, and project as-built drawings to the Board staff,
- accepted the Flood Safety and Preparedness Plan, and
- assigned the Board responsibilities to operate and maintain the setback levee as part of the SRFCP.

On August 15, 2013 LD 1 submitted the *Vegetation Maintenance and Monitoring Plan for the Enlarged Floodplain at Star Bend* (VMMP) to Board staff. The VMMP was

developed to be responsive to maintaining the flow conveyance and flood safety attributes of the improved flood control system at Star Bend while collectively meeting the U.S. Fish and Wildlife Service (USFWS) Biological Opinion's (No.81420-2009-F-0372-1, dated February 6, 2009) mitigation, compensatory, and conservation conditions specifically developed for the setback levee project. The VMMP describes the operations and maintenance requirements to maintain design flows within the floodway at Star Bend, and requires LD 1 to maintain approximately 20.5 acres within the enlarged floodplain to comply with the Biological Opinion for Valley Elderberry Longhorn Beetle mitigation and habitat enhancement (see VMMP Figure 4).

Board staff has determined that the VMMP, finalized in August 2013 (Attachment G) and which includes a *Habitat Enhancement Plan for the Feather River Setback Levee and Habitat Enhancement Project at Star Bend, March 6, 2009*, meets conditions of Permit No. 18191 to implement all mitigation measures of the LD 1 Mitigation Monitoring and Reporting Plan, as well as conditions of the OMRRR Agreement between the Board and LD 1 to "perform all mitigation features of the EIP project, without limitation, in accordance with the EIP Project design specifications, environmental permits, environmental impact reports, regulations, and directions prescribed by the State".

6.0 – ENGINEER’S CERTIFICATION FOR PROJECT COMPLETION

The final Engineer’s Certification (Attachment H) was certified on June 4, 2013 by GEI Consultants and included:

- MHM Engineers Certifying that the project was built according to Plans and Specifications, dated December 31, 2010
- Wood Rogers – Project Design Engineer, Project Engineer for Construction Management, Hydraulic Analysis, and Civil Design, dated March 20, 2013
- Blackburn Consultants – Geotechnical Design Engineer, dated March 20, 2013
- The CVFPB letter to the USACE indicating project completion and CCR Title 23 compliance, dated October 23, 2012

7.0 – CEQA ANALYSIS

LD1 as lead agency under the California Environmental Quality Act, Public Resources Code sections 21000 et seq. ("CEQA") prepared a Draft Environmental Impact Report (DEIR) (SCH No. 2006052087, February 2007), Final Environmental Impact Report (FEIR) (SCH No. 2006052087, May 2007), and Mitigation Monitoring and Reporting Plan (MMRP) for the Feather River Setback Levee Project at Star Bend. The LD1

Board approved the Feather River Setback Levee Project at Star Bend (LD 1 Resolution 07-03), the FEIR, and MMRP, and approved findings and a Statement of Overriding Considerations pursuant to the CEQA Guidelines.

The Board, as a responsible agency, independently reviewed the analyses in the DEIR (SCH No. 2006052087, February 2007) and the FEIR (May 2007) for the Feather River Setback Levee Project at Star Bend which included the LD1 Lead Agency findings, Statement of Overriding Considerations, MMRP. The Board, considered the DEIR (SCH No. 2006052087, February 2007) and the FEIR (May 2007) on the Feather River Setback Levee Project at Star Bend, and the LD1 Lead Agency findings, and adopted Resolution 2009-07 including the project description, analysis and findings relevant to the project at the April 17, 2009 Board meeting.

The Board, as a responsible agency, has previously approved construction of project works under Permit No. 18191, made appropriate CEQA findings, and filed determinations with the State Clearinghouse.

The action before the Board here consists solely of the transfer of operations and maintenance responsibilities and corresponding documents for the completed project to LD 1. This action constitutes a ministerial approval statutorily exempt from CEQA under CEQA Guidelines section 15268.

8.0 – STAFF CONCLUSIONS

Board staff concludes that the Feather River Setback Levee at Star Bend was constructed in accordance with the final (100 percent) plans and specifications, met all permit conditions (including all USACE conditions incorporated in the Board permit), is compliant with the Board's Title 23 regulations, and was properly certified by professional engineers.

Staff further concludes that the project was properly transferred by the USACE to the Board, and that all necessary preparations have been made to transfer operations and maintenance responsibilities to LD 1 as the local maintaining agency.

9.0 – STAFF RECOMMENDATION

Staff therefore recommends that the Board adopt Board Resolution 2013-21 which:

- Accepts responsibilities to operate and maintain the Feather River Setback Levee at Star Bend, a portion of the Sacramento River Flood Control Project as described in the USACE-accepted *Supplement to Standard Operations and Maintenance Manual, Unit No. 144, West Levee of Feather River from North Boundary of Levee*

District No. 1 to North Boundary of Maintenance Area 3 (Previously Reclamation District No. 823), U.S. Army Corps of Engineers, Sacramento District, June 2013.

- Transfers those same responsibilities (along with copies of the SSOMM and as-built drawings, Attachments I and J) to Levee District No. 1, Sutter through approval of the draft *Transfer of Operation and Maintenance Responsibilities for the Feather River Setback at Star Bend Project* letter (Attachment C).
- Determines that these transfers from the Board to LD 1 are ministerial approvals and statutorily exempt from CEQA, and directs the Executive Officer to file a Notice of Exemption with the State Clearinghouse.
- Authorizes the Board’s Executive Officer to execute the Transfer Letter in substantially the form provided.

10.0 – LIST OF ATTACHMENTS

- A. Project Maps
- B. Board Resolution 2013-21
- C. Draft Board O&M Transfer Letter to LD 1
- D. Board 408 Request Letter, Board Construction Permit No. 18191, and all USACE 408 approvals, permissions, and conditions
- E. OMR&R Agreement between Board and LD 1, December 3, 2010
- F. USACE O&M Transfer Letter to Board, July 18, 2013
- G. Vegetation Maintenance and Monitoring Plan, August 2013 (including
- H. Engineer Certifications, June 4, 2013
- I. Supplement to Standard O&M Manual, Sacramento River Flood Control Project, Unit No. 144 (West Levee of Feather River from North Boundary of Levee District No.1 to North Boundary of Maintenance Area-3 (previously Reclamation District No. 823), June 2013
- J. Project As-Built Drawings

Project Closeout Review:	David Williams, P.E., Senior Engineer, WR
Staff Report:	David Williams, P.E., Senior Engineer, WR
Resolution:	James Herota, Senior Environmental Scientist (Specialist)
Document Review:	Eric R. Butler, Projects and Environmental Branch Chief
Legal Review:	Leslie Gallagher, Board Chief Counsel
Final Review:	Len Marino, Chief Engineer