

DRAFT**Memorandum on Public Review Period and Comments Received for the Yolo Bypass East Levee Project.**

This memorandum documents public, stakeholder, and agency comments and responses associated with the West Sacramento Area Flood Control Agency (WSAFCA), Yolo Bypass East Levee Reach Project (the Project). Pursuant to section 15074(b) of the California Environmental Quality Act (CEQA), “prior to approving a project, the decision making body shall consider the proposed negative declaration or mitigated negative declaration together with any comments received during the public review process.”

On November 5, 2021, WSAFCA published a Notice of Intent (NOI) to adopt a Mitigated Negative Declaration for the Project in accordance with the CEQA Guidelines. The NOI initiated and released the Project’s Draft Supplemental Environmental Assessment (EA) and Initial Study/Mitigated Negative Declaration (IS/MND) (State Clearinghouse Number 2021110114) for a 30-day period of public review that commenced on November 5, 2021 and ended on December 6, 2021. WSAFCA received four (4) written comments on the Project. Refer to **Table 1**, for a list of individuals, agencies, and other interested stakeholders that provided written comments on the Project and the EA-IS/MND. During the public review period, WSAFCA and United States Army Corps of Engineers held a virtual public meeting on November 17, 2021 to present the EA-IS/MND to the public. Comments were solicited; however, no public comments were received at the virtual public meeting.

The CEQA Guidelines do not require formal responses to comments as part of the adoption process for a EA-IS/MND. However, WSAFCA acknowledges its receipt of the comments to demonstrate its responsibility to the community and stakeholders as a CEQA lead agency. The EA-IS/MND, along with these comments will be taken into consideration by WSAFCA’s Board of Directors at their next regular meeting scheduled on December 16, 2021.

TABLE 1
LIST OF WRITTEN COMMENT LETTERS FROM INDIVIDUALS, AGENCIES, AND ORGANIZATIONS

Letter	Commenter	Date of Comment
1	Kay Sanders, Estes Trucking	November 10, 2021
2	Delta Protection Commission	December 6, 2021
3	Central Valley Regional Water Quality Control Board	December 6, 2021
4	Delta Stewardship Council	December 6, 2021
5		
6		
7		
8		

Zollo, Mark

From: Zollo, Mark
Sent: Wednesday, November 10, 2021 7:57 AM
To: Brown, Brian; Sanders, Kay
Subject: Re: Estes Express Lines West Capitol

Hi Kay,

To follow up on Brian's response, the project will utilize the RD 900 access road at the west end of the terminal parcel as part of the haul route/site access, sheet GC101. The work/pump station construction take place within the existing levee system north of the west adjoining properties (DWR owner, City of West Sacramento owner). The project will likely also use the City owned parcel for some level of office/staging. Construction activity is not expected to disrupt traffic on West Capitol Avenue and, in any case, will not impact/disrupt terminal activity.

Project work on the southern portion of the project will utilize Enterprise and potentially Channel, Seaport, and Lake for access and haul route. The work takes place within the established levee system and is not expected to interrupt traffic and commercial/industrial operation in the area.

Lastly, the project will obtain necessary encroachments from the City and a traffic management plan will be developed to coordinate uses and maintain access to property.

Work is tentatively scheduled for next construction season.

Thank you for your interest in the project.

Cordially,
Mark

MARK ZOLLO
Senior Administrative Analyst
Flood Protection



City of West Sacramento, 2nd Floor
1110 West Capitol Avenue
West Sacramento, CA 95691
916-617-4541
markz@cityofwestsacramento.org

From: Brown, Brian <brianbr@cityofwestsacramento.org>
Date: Wednesday, November 10, 2021 at 7:05 AM

To: Sanders, Kay <Kay.Sanders@estes-express.com>, Zollo, Mark <markz@cityofwestsacramento.org>

Subject: RE: Estes Express Lines West Capitol

Response to LETTER 1, part 1

Kay,

The project will take place adjacent to your property. It will include drainage behind your property to carry levee seepage to a pump station that will pump the water back into the bypass. The project will not result in any negative impacts to your property, it will provide flood protection for your property. To illustrate my statements, I have provided the proposed project plans that can be downloaded using the Microsoft OneDrive link below.

 [WSAFCA_AD.pdf](#)

Please let me know if you have any additional questions.

Brian A. Brown, P.E., CFM
Senior Civil Engineer



1110 West Capitol Avenue, 2nd Floor

West Sacramento, CA 95691

Telephone: 916-617-4559

Fax: 916-371-0845

brianbr@cityofwestsacramento.org



Note: Due to COVID-19, City Hall is open by appointment only. I am currently teleworking with limited office hours. I am responding to email regularly.

From: Sanders, Kay <Kay.Sanders@estes-express.com>

LETTER 1

Sent: Wednesday, November 10, 2021 6:54 AM

To: Brown, Brian <brianbr@cityofwestsacramento.org>; Zollo, Mark <markz@cityofwestsacramento.org>

Subject: Estes Express Lines West Capitol

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

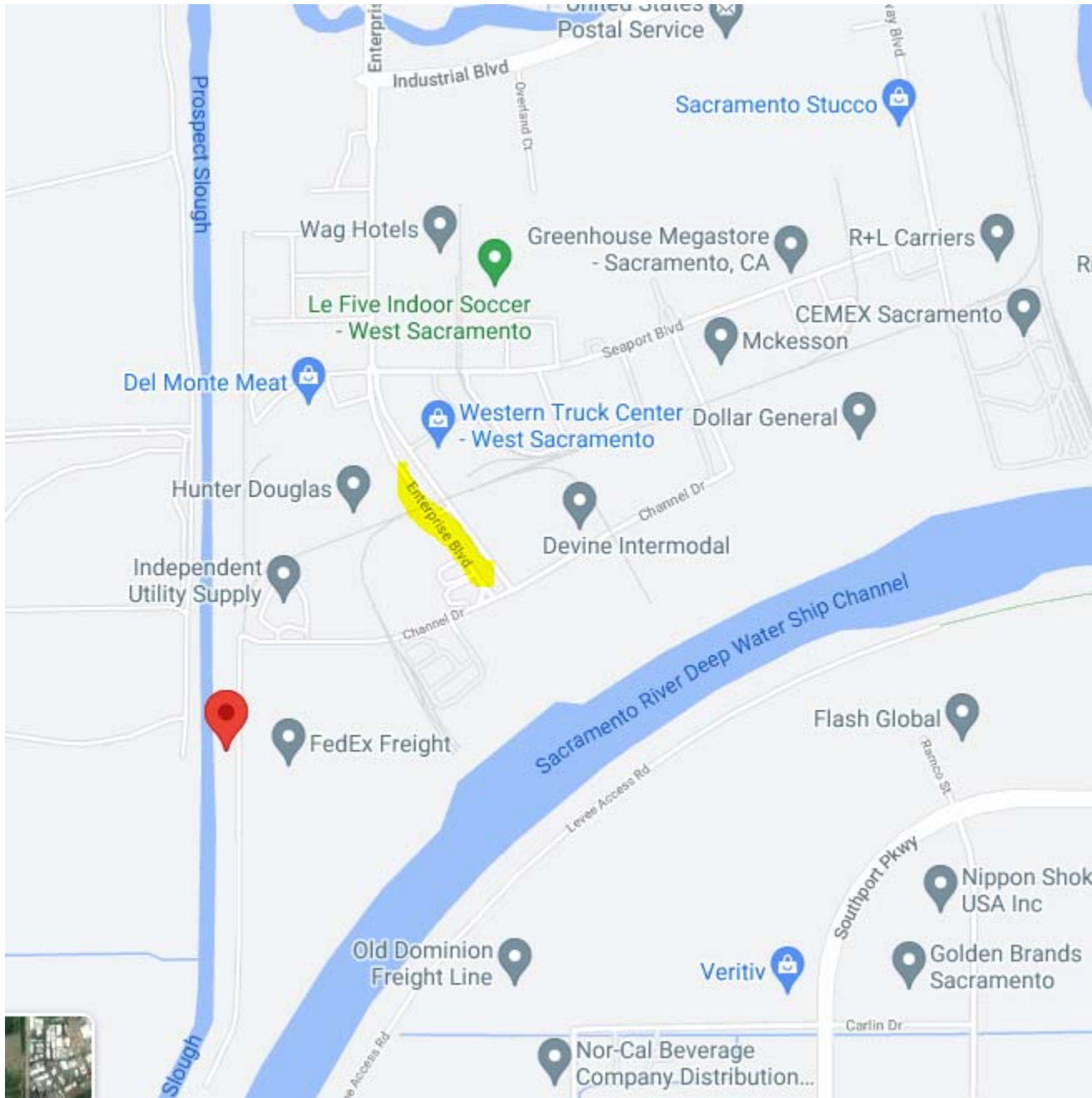
Gentlemen,

I have received notice regarding the Yolo Bypass East Levee work proposed, and would like to see an aerial of how this project may impact our property located at 4200 West Capitol.

The notice provides a website and the coordinates provided on the website show the location but does not show the full area of work to be conducted. The details state the work will done at cross streets of Interstate 80 and Enterprise Drive. Neither is waterfront and I believe it may mean Enterprise Blvd... not Drive. See below. The red is the longitude latitude coordinates and the yellow indicates cross streets.

Please advise if our property will be impacted and if so, how.

Thanks



Kay Sanders
Real Estate Manager
Corporate Real Estate Department
Estes Express Lines
3901 West Broad Street
Richmond, VA 23230
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DELTA PROTECTION COMMISSION

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LETTER 2

Don Nottoli, Chair
 Sacramento County Board of
 Supervisors

Chuck Winn, Vice Chair
 San Joaquin County Board of
 Supervisors

Diane Burgis
 Contra Costa County Board of
 Supervisors

John Vasquez
 Solano County Board of
 Supervisors

Oscar Villegas
 Yolo County Board of
 Supervisors

George Fuller
 Cities of Contra Costa and
 Solano Counties

Paul Steele
 Cities of Sacramento and
 Yolo Counties

Alan Nakanishi
 Cities of San Joaquin County

Jim Paroli
 Central Delta Reclamation
 Districts

Tom Slater
 North Delta Reclamation
 Districts

Nick Mussi
 South Delta Reclamation
 Districts

David Kim
 CA State Transportation
 Agency

Karen Ross
 CA Department of Food and
 Agriculture

Wade Crowfoot
 CA Natural Resources Agency

Brian Bugsch
 CA State Lands Commission

Ex Officio Members

Honorable Jim Frazier
 California State Assembly

Susan Talamantes Eggman
 California State Senate

December 6, 2021

Greg Fabun, General Manager
 West Sacramento Area Flood Control Agency
 1110 West Capitol Avenue
 West Sacramento, California 95691

Re: Environmental Assessment/Mitigated Negative Declaration for Yolo Bypass
 East Levee Project (SCH# 2009072055)

Dear Mr. Fabun:

Thank you for providing the Delta Protection Commission (Commission) the opportunity to review the Environmental Assessment/Mitigated Negative Declaration for the Yolo Bypass East Levee Project (Project). The US Army Corps of Engineers and West Sacramento Area Flood Control Agency (WSAFCA) propose to install stability berms, replenish waterside revetment, reconstruct maintenance roads, and improve the levee drainage system of the Yolo Bypass East Levee. The Project is the first increment of the larger federal West Sacramento Project that will improve the West Sacramento Levee System.

The Commission is a state agency charged with ensuring orderly, balanced conservation and development of Delta land resources and improved flood protection. Proposed local government projects within the Primary Zone of the Legal Delta must be consistent with the Commission's Land Use and Resource Management Plan (LURMP).

Although the Project does not fall within the Commission's jurisdiction over "development" in the Primary Zone, we submit these comments under Public Resource Code Sections 5852-5855 (The Great California Delta Trail Act). These sections direct the Commission to develop and adopt a plan and implementation program for a continuous regional recreational corridor extending throughout the five Delta Counties linking the San Francisco Bay Trail system to the Sacramento River trails. The Commission is currently preparing the final Great California Delta Trail Master Plan.

December 6, 2021

Page 2

The Commission is supportive of projects that provide needed flood protection and stability for the levee system within the Delta. Given the proximity of your Project to existing and proposed trails in West Sacramento, we hope that the Commission and the City of West Sacramento can work with WSAFCA on possible locations for trails and potentially incorporate these into the Great Delta Trail.

Thank you for the opportunity to provide input. Please contact Blake Roberts, Program Manager, at (530) 650-6572 for any questions regarding the comments provided.

Sincerely,

A handwritten signature in blue ink, appearing to read "E. Vink". The signature is fluid and cursive, with the first name "Erik" and last name "Vink" clearly distinguishable.

Erik Vink
Executive Director

cc: Oscar Villegas, Yolo County Board of Supervisors and Commission Member
Mayor Martha Guerrero, City of West Sacramento

GAVIN NEWSOM
GOVERNORJARED BLUMENFELD
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Central Valley Regional Water Quality Control Board

6 December 2021

Greg Fabun
West Sacramento Flood Control Agency
1110 West Capitol Avenue
West Sacramento, CA 95691
gregf@cityofwestsacramento.org

COMMENTS TO REQUEST FOR REVIEW FOR THE MITIGATED NEGATIVE DECLARATION, YOLO BYPASS EAST LEVEE REACH PROJECT, SCH#2021110114, YOLO COUNTY

Pursuant to the State Clearinghouse's 5 November 2021 request, the Central Valley Regional Water Quality Control Board (Central Valley Water Board) has reviewed the *Request for Review for the Mitigated Negative Declaration* for the Yolo Bypass East Levee Reach Project, located in Yolo County.

Our agency is delegated with the responsibility of protecting the quality of surface and groundwaters of the state; therefore, our comments will address concerns surrounding those issues.

I. Regulatory Setting

Basin Plan

The Central Valley Water Board is required to formulate and adopt Basin Plans for all areas within the Central Valley region under Section 13240 of the Porter-Cologne Water Quality Control Act. Each Basin Plan must contain water quality objectives to ensure the reasonable protection of beneficial uses, as well as a program of implementation for achieving water quality objectives with the Basin Plans. Federal regulations require each state to adopt water quality standards to protect the public health or welfare, enhance the quality of water and serve the purposes of the Clean Water Act. In California, the beneficial uses, water quality objectives, and the Antidegradation Policy are the State's water quality standards. Water quality standards are also contained in the National Toxics Rule, 40 CFR Section 131.36, and the California Toxics Rule, 40 CFR Section 131.38.

The Basin Plan is subject to modification as necessary, considering applicable laws, policies, technologies, water quality conditions and priorities. The original Basin Plans were adopted in 1975, and have been updated and revised periodically as required, using Basin Plan amendments. Once the Central Valley Water Board has adopted a Basin Plan amendment in noticed public hearings, it must be approved by the State Water Resources Control Board (State Water Board), Office of

KARL E. LONGLEY ScD, P.E., CHAIR | PATRICK PULUPA, ESQ., EXECUTIVE OFFICER

Administrative Law (OAL) and in some cases, the United States Environmental Protection Agency (USEPA). Basin Plan amendments only become effective after they have been approved by the OAL and in some cases, the USEPA. Every three (3) years, a review of the Basin Plan is completed that assesses the appropriateness of existing standards and evaluates and prioritizes Basin Planning issues. For more information on the *Water Quality Control Plan for the Sacramento and San Joaquin River Basins*, please visit our website:

http://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/

Antidegradation Considerations

All wastewater discharges must comply with the Antidegradation Policy (State Water Board Resolution 68-16) and the Antidegradation Implementation Policy contained in the Basin Plan. The Antidegradation Implementation Policy is available on page 74 at:

https://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/sacsjr_2018_05.pdf

In part it states:

Any discharge of waste to high quality waters must apply best practicable treatment or control not only to prevent a condition of pollution or nuisance from occurring, but also to maintain the highest water quality possible consistent with the maximum benefit to the people of the State.

This information must be presented as an analysis of the impacts and potential impacts of the discharge on water quality, as measured by background concentrations and applicable water quality objectives.

The antidegradation analysis is a mandatory element in the National Pollutant Discharge Elimination System and land discharge Waste Discharge Requirements (WDRs) permitting processes. The environmental review document should evaluate potential impacts to both surface and groundwater quality.

II. Permitting Requirements

Construction Storm Water General Permit

Dischargers whose project disturb one or more acres of soil or where projects disturb less than one acre but are part of a larger common plan of development that in total disturbs one or more acres, are required to obtain coverage under the General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Construction General Permit), Construction General Permit Order No. 2009-0009-DWQ. Construction activity subject to this permit includes clearing, grading, grubbing, disturbances to the ground, such as stockpiling, or excavation, but does not include regular maintenance activities performed to restore the original line, grade, or capacity of the facility. The Construction General Permit requires the development and implementation of a Storm Water Pollution Prevention Plan (SWPPP). For more information on the Construction General Permit, visit the State Water Resources Control Board website at:

http://www.waterboards.ca.gov/water_issues/programs/stormwater/constpermits.shtml

Phase I and II Municipal Separate Storm Sewer System (MS4) Permits¹

The Phase I and II MS4 permits require the Permittees reduce pollutants and runoff flows from new development and redevelopment using Best Management Practices (BMPs) to the maximum extent practicable (MEP). MS4 Permittees have their own development standards, also known as Low Impact Development (LID)/post-construction standards that include a hydromodification component. The MS4 permits also require specific design concepts for LID/post-construction BMPs in the early stages of a project during the entitlement and CEQA process and the development plan review process.

For more information on which Phase I MS4 Permit this project applies to, visit the Central Valley Water Board website at:

http://www.waterboards.ca.gov/centralvalley/water_issues/storm_water/municipal_permits/

For more information on the Phase II MS4 permit and who it applies to, visit the State Water Resources Control Board at:

http://www.waterboards.ca.gov/water_issues/programs/stormwater/phase_ii_municipal.shtml

Industrial Storm Water General Permit

Storm water discharges associated with industrial sites must comply with the regulations contained in the Industrial Storm Water General Permit Order No. 2014-0057-DWQ. For more information on the Industrial Storm Water General Permit, visit the Central Valley Water Board website at:

http://www.waterboards.ca.gov/centralvalley/water_issues/storm_water/industrial_general_permits/index.shtml

Clean Water Act Section 404 Permit

If the project will involve the discharge of dredged or fill material in navigable waters or wetlands, a permit pursuant to Section 404 of the Clean Water Act may be needed from the United States Army Corps of Engineers (USACE). If a Section 404 permit is required by the USACE, the Central Valley Water Board will review the permit application to ensure that discharge will not violate water quality standards. If the project requires surface water drainage realignment, the applicant is advised to contact the Department of Fish and Game for information on Streambed Alteration Permit requirements. If you have any questions regarding the Clean Water Act Section 404 permits, please contact the Regulatory Division of the Sacramento District of USACE at (916) 557-5250.

Clean Water Act Section 401 Permit – Water Quality Certification

If an USACE permit (e.g., Non-Reporting Nationwide Permit, Nationwide Permit, Letter of Permission, Individual Permit, Regional General Permit, Programmatic

¹ Municipal Permits = The Phase I Municipal Separate Storm Water System (MS4) Permit covers medium sized Municipalities (serving between 100,000 and 250,000 people) and large sized municipalities (serving over 250,000 people). The Phase II MS4 provides coverage for small municipalities, including non-traditional Small MS4s, which include military bases, public campuses, prisons and hospitals.

General Permit), or any other federal permit (e.g., Section 10 of the Rivers and Harbors Act or Section 9 from the United States Coast Guard), is required for this project due to the disturbance of waters of the United States (such as streams and wetlands), then a Water Quality Certification must be obtained from the Central Valley Water Board prior to initiation of project activities. There are no waivers for 401 Water Quality Certifications. For more information on the Water Quality Certification, visit the Central Valley Water Board website at: [https://www.waterboards.ca.gov/centralvalley/water issues/water quality certification/](https://www.waterboards.ca.gov/centralvalley/water%20issues/water%20quality%20certification/)

Waste Discharge Requirements – Discharges to Waters of the State

If USACE determines that only non-jurisdictional waters of the State (i.e., “non-federal” waters of the State) are present in the proposed project area, the proposed project may require a Waste Discharge Requirement (WDR) permit to be issued by Central Valley Water Board. Under the California Porter-Cologne Water Quality Control Act, discharges to all waters of the State, including all wetlands and other waters of the State including, but not limited to, isolated wetlands, are subject to State regulation. For more information on the Waste Discharges to Surface Water NPDES Program and WDR processes, visit the Central Valley Water Board website at: [https://www.waterboards.ca.gov/centralvalley/water issues/waste to surface water/](https://www.waterboards.ca.gov/centralvalley/water%20issues/waste%20to%20surface%20water/)

Projects involving excavation or fill activities impacting less than 0.2 acre or 400 linear feet of non-jurisdictional waters of the state and projects involving dredging activities impacting less than 50 cubic yards of non-jurisdictional waters of the state may be eligible for coverage under the State Water Resources Control Board Water Quality Order No. 2004-0004-DWQ (General Order 2004-0004). For more information on the General Order 2004-0004, visit the State Water Resources Control Board website at: [https://www.waterboards.ca.gov/board decisions/adopted orders/water quality/2004/wqo/wqo2004-0004.pdf](https://www.waterboards.ca.gov/board%20decisions/adopted%20orders/water%20quality/2004/wqo/wqo2004-0004.pdf)

Dewatering Permit

If the proposed project includes construction or groundwater dewatering to be discharged to land, the proponent may apply for coverage under State Water Board General Water Quality Order (Low Threat General Order) 2003-0003 or the Central Valley Water Board’s Waiver of Report of Waste Discharge and Waste Discharge Requirements (Low Threat Waiver) R5-2018-0085. Small temporary construction dewatering projects are projects that discharge groundwater to land from excavation activities or dewatering of underground utility vaults. Dischargers seeking coverage under the General Order or Waiver must file a Notice of Intent with the Central Valley Water Board prior to beginning discharge.

For more information regarding the Low Threat General Order and the application process, visit the Central Valley Water Board website at: [http://www.waterboards.ca.gov/board decisions/adopted orders/water quality/2003/wqo/wqo2003-0003.pdf](http://www.waterboards.ca.gov/board%20decisions/adopted%20orders/water%20quality/2003/wqo/wqo2003-0003.pdf)

For more information regarding the Low Threat Waiver and the application process, visit the Central Valley Water Board website at:
https://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/waivers/r5-2018-0085.pdf

Limited Threat General NPDES Permit

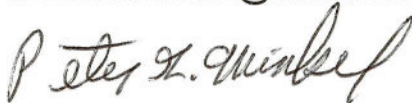
If the proposed project includes construction dewatering and it is necessary to discharge the groundwater to waters of the United States, the proposed project will require coverage under a National Pollutant Discharge Elimination System (NPDES) permit. Dewatering discharges are typically considered a low or limited threat to water quality and may be covered under the General Order for *Limited Threat Discharges to Surface Water* (Limited Threat General Order). A complete Notice of Intent must be submitted to the Central Valley Water Board to obtain coverage under the Limited Threat General Order. For more information regarding the Limited Threat General Order and the application process, visit the Central Valley Water Board website at:

https://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/general_orders/r5-2016-0076-01.pdf

NPDES Permit

If the proposed project discharges waste that could affect the quality of surface waters of the State, other than into a community sewer system, the proposed project will require coverage under a National Pollutant Discharge Elimination System (NPDES) permit. A complete Report of Waste Discharge must be submitted with the Central Valley Water Board to obtain a NPDES Permit. For more information regarding the NPDES Permit and the application process, visit the Central Valley Water Board website at: <https://www.waterboards.ca.gov/centralvalley/help/permit/>

If you have questions regarding these comments, please contact me at (916) 464-4684 or Peter.Minkel2@waterboards.ca.gov.



Peter G. Minkel
Engineering Geologist

cc: State Clearinghouse unit, Governor's Office of Planning and Research,
Sacramento



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December 6, 2021

Greg Fabun, General Manager
West Sacramento Area Flood Control Agency
1110 West Capitol Avenue
West Sacramento, CA 95691

RE: Comments on Draft Supplemental EA/IS for the Yolo Bypass East Levee Project, SCH# 201110114

Dear Greg Fabun:

Thank you for the opportunity to review and comment on the Draft Supplemental Environmental Assessment/Initial Study (EA/IS) for the Yolo Bypass East Levee Project (Project). The supplemental EA/IS addresses project level design changes from the 2015 West Sacramento General Revaluation Report (GRR) Final Environmental Impact Statement/Environmental Impact Report (2015 GRR FEIS/EIR). The 2015 GRR FEIS/EIR (SCH# 2009072055) covered nine levee reaches within West Sacramento, including portions of the Sacramento River, Yolo Bypass, Sacramento Bypass, and the Sacramento Deep Water Ship Channel. According to the EA/IS, the Project proposes to install stability berms, replenish waterside revetment, reconstruct maintenance roads, and improve the levee drainage system of the Yolo Bypass East Levee (YBEL) located in the City of West Sacramento. The proposed Project is the first increment of the larger federal West Sacramento levee improvement project.

The Council is an independent state agency established by the Sacramento-San Joaquin Delta Reform Act of 2009, codified in Division 35 of the California Water Code, sections 85000-85350 (Delta Reform Act). The Delta Reform Act charges the Council with furthering California's coequal goals of providing a more reliable water

supply and protecting, restoring, and enhancing the Sacramento-San Joaquin River Delta (Delta) ecosystem. (Wat. Code, § 85054.) The Delta Reform Act further states that the coequal goals are to be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place. The Council is charged with furthering California's coequal goals for the Delta through the adoption and implementation of the Delta Plan. (Wat. Code, § 85300.)

The Delta Reform Act grants the Council specific regulatory and appellate authority over certain actions, called "covered actions," of State or local public agencies that take place in whole or in part in the Delta. (Wat. Code, §§ 85210, 85225.30.) State and local agencies that propose to carry out, approve, or fund a qualifying covered action located in whole or in part in the Delta must file a certification of consistency with the Council, prior to initiating the implementation of the covered action, which includes detailed findings as to whether the covered action is consistent with the Delta Plan. (Wat. Code, §§ 85057, 85225; Cal. Code Regs., tit.23 5001(j)(1).)

COVERED ACTION DETERMINATION AND CERTIFICATION OF CONSISTENCY WITH THE DELTA PLAN

Based on the Project location and scope described in the EA/IS, the proposed Project appears to meet the definition of a covered action. Water Code section 85057.5(a) states that a covered action is a plan, program, or project, as defined pursuant to Section 21065 of the Public Resources Code, that meets all of the following conditions:

1. Will occur, in whole or in part, within the boundaries of the Delta (Wat. Code § 12220) or Suisun Marsh (Pub. Resources Code, § 29101; Wat. Code § 85057.5(a)(1).) The approximate boundaries of these areas are publicly available on the Open Portal at <https://data.ca.gov/dataset/suisun-march-boundary>, and <https://data.ca.gov/dataset/suisun-march-march-boundary>. *The Project would occur partially within the boundaries of the Delta.*
2. Will be carried out, approved, or funded by a State or a local public agency. (Wat. Code §§ 85057.5(a)(2).) *The Project would be carried*

out by the U.S Army Corps of Engineers and its non-federal partner the West Sacramento Area Flood Control Agency (WSAFCA), a local public agency.

3. Is covered by one or more of the regulatory policies contained in the Delta Plan (Wat. Code § 85057.5(a)(3); Cal. Code Regs., tit. 23, §§ 5003-5015). *Delta Plan regulatory policies that may apply to the Project are discussed below.*
4. Will have a significant impact on achievement of one or both of the coequal goals or the implementation of government-sponsored flood control programs to reduce risks to people, property, and State interests in the Delta. (Wat. Code § 85057.5(a)(4).) *This Project would have a significant impact on implementation of a government-sponsored flood control program to reduce risk to people, property, and State interests in the Delta because it proposes improvements to existing levee facilities.*

WSAFCA must determine if the project is a covered action and, if so, file a Certification of Consistency with the Council prior to project implementation. (Wat. Code, § 85225; Cal. Code Regs., tit. 23, § 5001(j)(3).)

COMMENTS REGARDING DELTA PLAN POLICIES AND POTENTIAL CONSISTENCY CERTIFICATION

The following section describes the Delta Plan regulatory policies that may apply to the proposed Project based on the available information in the Draft EA/IS. This information is offered to assist WSAFCA to prepare final environmental documents that could be used to support a Certification of Consistency for the Project. This information may also assist WSAFCA to describe the relationship between the proposed Project and the Delta Plan in the Project's Final EA/IS.

General Policy 1: Detailed Findings to Establish Consistency with the Delta Plan

Delta Plan Policy **G P1** (Cal. Code Regs., tit. 23, § 5002) specifies what must be addressed in a Certification of Consistency by a state or local public agency

proposing a covered action and includes the following requirements which a project must comply with to be considered consistent with the Delta Plan:

Mitigation Measures

Delta Plan Policy **G P1(b)(2)** (Cal. Code Regs., tit. 23, § 5002(b)(2)) requires that covered actions not exempt from the California Environmental Quality Act (CEQA) must include all applicable feasible mitigation measures adopted and incorporated into the Delta Plan as amended April 26, 2018 (unless the measures are within the exclusive jurisdiction of an agency other than the agency that files the Certification of Consistency), or substitute mitigation measures that the agency finds are equally or more effective. These mitigation measures are identified in Delta Plan Appendix O and are available at: <https://deltacouncil.ca.gov/pdf/delta-plan/2018-appendix-o-mitigation-monitoring-and-reporting-program.pdf>.

The Draft EA/IS for the proposed Project identifies potentially significant impacts for biological resources, hydrology/water quality, and transportation. The Draft EA/IS proposes numerous avoidance and minimization measures to address these impacts. SJAVCA should ensure that the proposed mitigation measures in the Final EA/IS are equally or more effective than applicable feasible Delta Plan mitigation measures in Delta Plan Appendix O. In particular, as described further in discussion of Delta Plan Policy ER P5 below, if mitigation for invasive species impacts is warranted, Project Mitigation Measure Bio-1 should require preparation of an invasive species management plan that meets the requirements set forth in Delta Plan Mitigation Measure 4-1.

Best Available Science

Delta Plan Policy **G P1(b)(3)** (Cal. Code Regs., tit. 23, § 5002(b)(3)) states that actions subject to Delta Plan regulations must document use of best available science as relevant to the purpose and nature of the project. The Delta Plan defines best available science as “best available science information and data for informing management and policy decisions.” (Cal. Code Regs., tit. 23, § 5001(f).) Best available science is also required to be consistent with the guidelines and criteria in Appendix 1A of the Delta Plan

(<http://deltacouncil.ca.gov/pdf/delta-plan/2015-appendix-1a.pdf>. Six criteria as used to define best available science: relevance, inclusiveness, objectivity, transparency and openness, timeliness, and peer review. (Cal. Code Regs., tit. 23, Appendix 1A.)

If WSAFCA determines that the project is a covered action, WSAFCA should prepare a Certification of Consistency prior to project implementation that documents the scientific rationale for applying these six criteria to the Project, citing to technical studies and the Final EA/IS. The Council's Delta Science Program's Adaptive Management Liaisons are available to provide further consultation and guidance regarding the use and documentation of best available science pertaining to a future Certification of Consistency.

Ecosystem Restoration Policy 3: Protect Opportunities to Restore Habitat

Delta Plan Policy **ER P3** (Cal. Code Regs., tit. 23, § 5007) states that, within the priority habitat restoration areas (PHRAs) depicted in Appendix 5 (available within Appendix B: <https://deltacouncil.ca.gov/pdf/delta-plan/2013-appendix-b-combined.pdf>), significant adverse impacts to the opportunity to restore habitat at appropriate elevations as described in Delta Plan Policy ER P2 (Cal. Code Regs., tit. 23, § 5006) must be avoided or mitigated.

The Project is proposed to be located within the Yolo Bypass PHRA. The EA/IS does not include discussion regarding the relationship between the project and potential opportunities to restore habitat at appropriate elevations in the PHRA. WSAFCA should acknowledge Policy ER P3 in the Biological Resources section of the Final EA/IS and should describe how WSAFCA would avoid or mitigate any potential impacts to the opportunity to restore habitat within this PHRA.

Ecosystem Restoration Policy 4: Expand Floodplains and Riparian Habitats in Levee Projects

Delta Plan Policy **ER P4** (Cal. Code Regs., tit. 23 § 5008) requires levee projects to evaluate and where feasible incorporate alternatives, including the use of setback levees, to increase floodplains and riparian habitats. The policy also requires the

evaluation of setback levees in several areas of the Delta, which include the North Forks of the Mokelumne River.

The proposed Project described in the Draft EA/IS consists of structural improvements to the existing Yolo Bypass East Levee to address seepage, erosion and overtopping concerns. A future Certification of Consistency for the Project should describe how the modified design was evaluated and where alternatives and setback levees were considered and determined not to be feasible.

Ecosystem Restoration Policy 5: Avoid Introductions of and Habitat Improvements for Invasive Nonnative Species

Delta Plan Policy **ER P5** (Cal. Code Regs., tit. 23, § 5009) requires that covered actions that have the reasonable probability of introducing or improving habitat conditions for nonnative invasive species fully consider and avoid or mitigate the potential for new introductions of, or improved habitat conditions for nonnative invasive species, striped bass, or bass in a way that appropriately protects the ecosystem.

The Draft EA/IS does not address the reasonable probability of introduction or improved habitat conditions for nonnative invasive species, nor describe how the Yolo Bypass East Levee Project would avoid or mitigate conditions that would lead to the introduction of, or improved habitat conditions for nonnative invasive species. The Final EA/IS should specifically discuss how the Project will avoid or mitigate these conditions for both wildlife and terrestrial species and aquatic weeds. In the event that mitigation is warranted, mitigation measures should be consistent with Mitigation Measure 4-1 in Delta Plan Appendix O, which is available at: <https://deltacouncil.ca.gov/pdf/delta-plan/2018-appendix-o-mitigation-monitoring-and-reporting-program.pdf>.

Risk Reduction Policy 1: Prioritization of State Investments in Delta Levees and Risk Reduction

Delta Plan Policy **RR P1** (Cal. Code Regs., tit. 23, § 5012) calls for the prioritization of

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State investments in Delta flood risk management, including levee operation, maintenance, and improvements.

The proposed Project described in the Draft EA/IS would help avoid adverse flood-related impacts and would contribute to reduced risk in the City of West Sacramento by decreasing potential flood impacts to people and property protected by the impacted levees. A future Certification of Consistency for the proposed Project should describe how the Project is consistent with the priorities and goals for State investment in Delta integrated flood management outlined in RR P1.

CLOSING COMMENTS

As WSAFCA proceeds with design, development, and environmental impact analysis of the project, the Council invites WSAFCA to engage Council staff in early consultation (prior to submittal of a Certification of Consistency) to discuss project features and mitigation measures that would align with the Delta Plan.

More information on covered actions, early consultation, and the certification process can be found on the Council website, <https://coveredactions.deltacouncil.ca.gov>.

Council staff are available to discuss issues outlined in this letter as the West Sacramento Area Flood Control Agency proceeds in the next stages of its project and approval processes.

Please contact Erin Mullin, Supervising Engineer, at (916) 902-6482 or erin.mullin@deltacouncil.ca.gov with any questions.

Sincerely,



Jeff Henderson, AICP
Deputy Executive Officer
Delta Stewardship Council