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

FEB 11 2013

Jeff Koschak
U.S. Army Corps of Engineers, Sacramento District
1325 J Street
Sacramento, California 95814-2922

Subject: Feather River West Levee Project Draft Environmental Impact Statement (DEIS)/ Environmental Impact Report, Butte and Sutter Counties, California [CEQ #20120399]

Dear Mr. Koschak:

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.

EPA has rated the DEIS as EC-2 -- Environmental Concerns-Insufficient Information" (see Enclosure 1: "Summary of Rating Definitions and Follow-Up Action") because it is unclear whether significant impacts to waters of the U.S. and sensitive species and habitats would be effectively avoided and/or mitigated. The Final Environmental Impact Statement (FEIS) should include additional information to demonstrate that the preferred alternative is the least environmentally damaging practicable alternative to meet the project purpose, and describe and discuss options for mitigating impacts to waters of the U.S. The FEIS should also include additional information regarding sensitive species and habitats in the project area, air pollutant emissions during project construction, and mitigation measures to minimize project impacts. Our detailed comments are enclosed (see Enclosure 2).

We appreciate the opportunity to review this DEIS. Please send a hard copy of the FEIS to this office (mailcode CED-2) when it is officially filed with EPA's new electronic EIS 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 (CED-2)

Enclosures:
(1) Summary of Rating Definitions and Follow-Up Action
(2) EPA's detailed comments on the Feather River West Levee Project DEIS

SUMMARY OF EPA RATING DEFINITIONS*

This rating system was developed as a means to summarize the U.S. Environmental Protection Agency's (EPA) level of concern with a proposed action. The ratings are a combination of alphabetical categories for evaluation of the environmental impacts of the proposal and numerical categories for evaluation of the adequacy of the Environmental Impact Statement (EIS).

ENVIRONMENTAL IMPACT OF THE ACTION

"LO" (Lack of Objections)

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

"EC" (Environmental Concerns)

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

"EO" (Environmental Objections)

The EPA review has identified significant environmental impacts that should be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

"EU" (Environmentally Unsatisfactory)

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potentially unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the Council on Environmental Quality (CEQ).

ADEQUACY OF THE IMPACT STATEMENT

Category "1" (Adequate)

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category "2" (Insufficient Information)

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

Category "3" (Inadequate)

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

*From EPA Manual 1640, Policy and Procedures for the Review of Federal Actions Impacting the Environment.

Feather River West Levee Project DEIS
EPA Comments – February, 2013

Water Quality

Table 3.8-6 in the DEIS provides acreages of waters of the U.S. that could be affected under each project alternative. These acreages appear to be based on jurisdictional delineations conducted by the Sutter Butte Flood Control Agency (SBFCA). The table may be incomplete, however, as it does not include acreages that could be affected by activities at borrow sites. Furthermore, the DEIS does not indicate whether these delineations have been verified by the U.S. Army Corps of Engineers (Corps). Lacking this information, it is difficult to determine the extent of potential impacts to waters of the U.S. and whether sufficient avoidance measures have been considered.

> **Recommendation:** For each alternative, the FEIS should provide verified acreages and types of potentially affected waters of the U.S., including those at borrow sites. Maps should be provided illustrating the locations and types of waters of the U.S. in relation to the proposed project footprint for each alternative.

Levee repair activities under any of the project alternatives would result in fill of waters of the U.S., which would require Clean Water Act Section 404 authorization by the Corps. To comply with Federal Guidelines for Specification of Disposal Sites for Dredged or Fill Materials (40 CFR 230), promulgated pursuant to Section 404(b)(1) of the Clean Water Act, any permitted discharge into waters of the U.S. must be the least environmentally damaging practicable alternative (LEDPA) available to achieve the project purpose. The DEIS does not provide an alternatives analysis that adequately demonstrates whether Alternative 3 is the LEDPA.

> **Recommendation:** The FEIS should identify the LEDPA, and explain the basis for this designation.

The DEIS (pp. 3.8-23, 24) indicates that SBFCA will develop, in coordination with regulatory agencies, a restoration plan for compensation for the loss of wetlands. The plan will include restoring or enhancing in-kind wetland habitat and open-water habitat at a mitigation ratio to ensure no net loss of habitat functions and values. Further details on how project impacts would be offset are not available in the DEIS, and it is unclear what mitigation options exist for the project (e.g., mitigation bank credits or off-site permittee-responsible projects). We note that an off-site permittee-responsible project could be appropriate, if it would support a watershed approach to aquatic resource management (such as contributing to existing regional conservation plans), and "will restore an outstanding resource based on a rigorous scientific and technical analysis" (40 CFR 230.93(b)(2)).

> **Recommendations:**
> - The FEIS should identify and discuss mitigation options for the proposed project, including where they would be located, how they would be conducted, and how they would comply with the Federal Mitigation Rule (40 CFR Part 230, Subpart J). If a mitigation bank or in-lieu fee (ILF) program would be used, the FEIS should identify the site, confirm that it is meeting or has met its performance standards, and that the types of mitigation needed are available at that site.
> - If sufficient bank or ILF credits are not available, EPA recommends that the Corps only approve permittee-responsible mitigation at sites selected using a watershed approach to restoration of ecosystem functions and services, and where activities are likely to be successful and naturally self-sustaining.
> - Please contact Paul Jones, EPA Wetlands Office, at (415) 972-3470 or jones.paul@epa.gov, to continue discussion of the LEDPA and mitigation plan.

The DEIS (p. 2-33) indicates that small, isolated infestations of invasive plant species would be treated with eradication methods that have been approved by or developed in conjunction with the Sutter and Butte county agricultural commissioners. It is unclear, however, whether these same methods would, potentially, be used for large infestations, and whether eradication methods would include chemical treatment.

> **Recommendation:** The FEIS should clarify whether large infestations would be treated with the same eradication methods as those used for small infestations, identify the approved eradication methods for both, and discuss whether pesticides might be used for small or large invasive plant infestations. If pesticides would, potentially, be used, the FEIS should identify the pesticides and state the provisions for their use. This discussion should include actions needed to comply with the California National Pollutant Discharge Elimination System permit for Aquatic Weed Control pesticide applications, which is under revision and scheduled for reissuance in 2013. Note that both the existing and proposed versions of the California permit require advance submission of an Aquatic 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

Air Quality

The DEIS provides construction emissions estimates for each alternative in pounds per day and tons per year for purposes of comparing them with the general conformity de minimis thresholds. It appears that the proposed project's direct and indirect contaminant emissions have not been modeled to show their estimated *concentrations* in the project area for each alternative for an accurate comparison with the NAAQS.

> **Recommendation:** Additional dispersion modeling should be conducted to determine air pollutant concentrations of criteria pollutants from direct, indirect, and cumulative emissions for an accurate comparison with the NAAQS, using comparable units (e.g. micrograms per cubic meter, parts per billion, or parts per million). The Final EIS should include this additional information.

Biological Resources

The DEIS identifies several special-status fish and wildlife species in the project area, including the endangered Sacramento River winter-run Chinook salmon, and the threatened green sturgeon, Central Valley steelhead, Central Valley spring-run Chinook salmon, valley elderberry longhorn beetle, and giant garter snake. The Feather River in the study area is designated critical habitat for green sturgeon, Central Valley steelhead, and Central Valley spring-run Chinook salmon. According to the DEIS, habitat surveys will be conducted for the valley elderberry longhorn beetle, giant garter snake, and several other special-status species before construction begins. These surveys should be completed prior to publication of the FEIS so that development of appropriate avoidance and mitigation measures to minimize significant impacts to these resources can be completed, and the impacts of project alternatives and the effectiveness of associated mitigation measures can be compared and assessed in the FEIS. Furthermore, the Biological Opinion will play an important role in informing the decision on alternative approval and what commitments, terms, and conditions must accompany that approval.

> **Recommendation:** The Final EIS should include the biological opinion and incorporate sufficient information on the special-status habitat surveys and compensatory mitigation proposals to show how mitigation commitments will be conducted and how effective they are expected to be in minimizing significant impacts.

The DEIS (Table 3.8-6) indicates that the preferred alternative would result in the loss of at least 21 acres of riparian habitat. According to page 3.8-21, a riparian habitat mitigation and monitoring plan will be prepared by a qualified restoration ecologist prior to vegetation removal, and potential mitigation areas would be evaluated to determine their suitability to support the target native tree species. While the DEIS (p. 3.8-29)

states that the disturbance or removal of this habitat would be a significant impact, it also states that the impact would be less than significant in the long term after establishment of compensatory vegetation. However, a habitat suitability evaluation and restoration mitigation and monitoring plan have not yet been prepared; therefore, it is unclear how or where these restoration activities would occur. As is the case for the special-status species discussed above, these habitat surveys should be completed prior to publication of the FEIS so that development of appropriate avoidance and mitigation measures to minimize significant impacts to these resources can be completed, and the impacts of project alternatives and the effectiveness of associated mitigation measures can be compared and assessed in the FEIS.

> **Recommendation:** The FEIS should include a summary of the habitat suitability evaluation, avoidance measures, and restoration mitigation and monitoring plan, including commitments regarding how and where restoration activities would occur. The FEIS should also discuss these commitments in the context of their anticipated effectiveness in minimizing significant impacts.

The DEIS (p. 3.8-30) states that implementation of Alternative 3 would result in greater effects on oak woodland and the open water land cover type than would Alternatives 1 and 2, but this statement conflicts with Table 3.8-6. This inconsistency should be rectified in the FEIS.