UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
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San Francisco, CA 94105-3901

JUL 24 2008

Colonel Thomas C. Chapman
District Engineer
U.S. Army Corps of Engineers
Sacramento District
1325 J Street, 14th floor
Sacramento, California 95814-2922

Subject: Public Notice (PN) SPK-2007-211 for the proposed Natomas Levee Improvement Project, Sacramento County, California

Dear Colonel Chapman:

We have reviewed the subject PN dated July 1, 2008, for the Natomas Levee Improvement Project proposed by the Sacramento Area Flood Control Agency (SAFCA) in northern Sacramento County and southern Sutter County, CA. The proposed project would result in the permanent destruction of approximately 15.15 acres of waters of the United States, including 7.58 acres of wetlands with an additional 69.32 acres of temporary impacts to waters of the US. The following comments have been prepared under the authority of, and in accordance with, the provisions of the Federal Guidelines (40 CFR 230) promulgated under section 404(b)(1) of the Clean Water Act (CWA). These comments are being provided under the circumstances of our current limited staffing. As outlined in these comments, we recommend that no permit be issued without a more definitive demonstration of compliance with the 404(b)(1) Guidelines (Guidelines).

According to the PN, the applicant proposes to improve the Natomas area levee system to provide additional flood protection to the 53,000-acre area. The proposed project is the first phase of the overall Landside Improvements Project and includes work to correct levee freeboard deficiencies and seepage potential along the Natomas Cross Canal south levee, Sacramento River east levee, and the Pleasant Grove Creek Canal west levee, as well as related landscape and irrigation/drainage infrastructure improvements in a portion of the Natomas Basin.

To comply with the CWA 404(b)(1) Guidelines, the applicant must clearly demonstrate that the "preferred" alternative is the Least Environmentally Damaging Practicable Alternative (LEDPA) that achieves the basic project purpose. The Guidelines describe a series of independent tests against which a proposed discharge must be evaluated [40 CFR 230.10 (a)-(d)]. As currently proposed, we cannot determine whether or not the applicant's preferred alternative represents the LEDPA, or complies with many of the other restrictions on discharges.

Analyses of Alternatives -- 40 CFR 230.10(a)
Although the PN does not contains detailed information on the alternatives analysis, it does refer to the EIS entitled "408 Permission and 404 Permit to Sacramento Area Flood Control Agency for the Natomas Levee Improvement Project, Sacramento," which appears to have sufficient information to make a determination of the consistency of the proposed project with this

provision of the Guidelines. While it appears the proposed project is the LEDPA, we encourage the applicant to continue to work closely with the US Fish and Wildlife Service and the California Department of Fish and Game (Wildlife Agencies) to ensure that this project adhere to, and not undermine, the underlying assumptions of the Natomas Basin Habitat Conservation Plan (NBHCP) and protect habitat for the giant garter snake, Swainson's hawk, burrowing owl, and sensitive plant species which the NBHCP is supposed to protect in perpetuity. Many of the detailed concerns are addressed in a letter to SAFCA from the Wildlife Agencies dated October 26, 2007, and we support the efforts of the Wildlife Agencies to address these concerns as they pertain to compliance with the Guidelines.

Water Quality, Toxic Effluent, and Endangered Species – 40 CFR 230.10(b)
As you know, this project area is known to support threatened or endangered species and is suitable or critical habitat for listed species.. As mentioned above, the NBHCP is a major controlling plan in the matter of wetland and wildlife habitat protection for the Natomas Basin. To be consistent with this section of the Guidelines, SAFCA needs to work closely with the Wildlife Agencies to ensure there is adequate compensation for permanent and temporary impacts to ESA habitat in a manner that is completely consistent with the NBHCP and to the satisfaction of the Natomas Basin Conservancy.

Minimize Potential Adverse Impacts – 40 CFR 230.10(d)
Mitigation of project impacts begins with the avoidance and minimization of direct, indirect and cumulative impacts to the aquatic ecosystem, followed by compensatory measures if a loss of aquatic functions and/or acreage is unavoidable. Compensatory mitigation is therefore intended only for unavoidable impacts to waters after the LEDPA has been determined.

The PN states that the applicant will prepare a mitigation plan to offset the permanent loss of 15.15 acres of waters by creating 14 acres of Giant Garter Snake (GGS) canals and 19 acres of irrigation canal according to a Conceptual Mitigation, Management, and Monitoring Plan which is being developed in coordination with the Wildlife Agencies. While the details of this plan have yet to be developed, we encourage the Corps to ensure that adequate compensation will occur for both the permanent and temporary impacts in a manner commensurate with the requirements of the NBHCP.

The draft EIS entitled "408 Permission and 404 Permit to Sacramento Area Flood Control Agency for the Natomas Levee Improvement Project, Sacramento, CA" states on page 210:

> "At least 1 acre of irrigation/drainage canal or 1 acre of seasonal wetland shall be created for every acre that is lost. This 1:1 compensation is exceeded in the habitat components of the proposed project design, which includes the following: creation of approximately 45 acres of jurisdictional habitat resulting from construction of the new GGS/Drainage Canal and expansion of the existing West Drainage Canal; creation of approximately 60 acres of new irrigation canal; and creation of 230 acres of managed marsh habitat.
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> SAFCA shall complete detailed design of habitat creation components and management protocols in coordination with and subject to approval of USACE, USFWS, and DFG. SAFCA shall also enter into agreements with entities responsible for long-term management of created canals and marsh habitats to ensure that performance standards

and long-term management goals will be met and provide assurances of adequate funding for habitat creation and management. Such agreements and funding assurances shall be subject to approval of USACE, USFWS, and DFG.

The PN and the EIS both state that the applicant will compensate for permanent impacts at a ratio of 1:1 (impact to compensation acreage). However, it appears as if considerably more than a 1:1 ratio will be achieved according to the proposal above from the EIS. Provided that these conditions listed in the EIS are adhered to and become special conditions of a 404 permit, we believe that the project should be in compliance with the mitigation section of the Guidelines. As stated above, many of the concerns the Wildlife Agencies have regarding the detailed implementation of compensatory mitigation actions are discussed in the aforementioned letter from them to SAFCA. We stress the importance of ensuring these issues are fully addressed and subsequently incorporated into the permitting process as appropriate.

Summary

Given the available information, it appears the proposed project complies with the restrictions on discharges under the Guidelines. We strongly encourage the applicant to continue to work closely with the Wildlife Agencies and your office to ensure that a programmatic, comprehensive approach is developed, with an accompanying mitigation and monitoring plan, to the full satisfaction of all key stakeholders so that the underlying assumptions of the NBHCP are adhered to as these important flood protection measures are put in place in the Natomas Basin.

Thank you for considering our concerns and recommendations. If you wish to discuss this matter, please contact me at (415) 972-3464 or Paul Jones of my staff at (415) 972-3470.

Sincerely,

David Smith, Supervisor
Wetlands Regulatory Office

cc:
Ken Sanchez, U.S. Fish and Wildlife Service, Region 8, Sacramento
Jeff Drongesen, CA Department of Fish and Game, Rancho Cordova
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