



CALIFORNIA CENTRAL VALLEY  
**FLOOD CONTROL**  
ASSOCIATION

April 30, 2020

Leslie Gallagher, Executive Officer  
Central Valley Flood Protection Board  
3310 El Camino Ave., Room 170  
Sacramento, CA 95821

Delivered via email: [Leslie.Gallagher@cvflood.ca.gov](mailto:Leslie.Gallagher@cvflood.ca.gov)

<i>Executive Director</i>	<b>MELINDA TERRY</b>
<i>President</i>	<b>MIKE HARDESTY</b>
<i>Vice President</i>	<b>LEWIS BAIR</b>
<i>Treasurer</i>	<b>PETE GHELFI</b>

**SUBJECT: Statement of No Objection Letter for Delta Conveyance Project**

Dear Leslie:

The Central Valley Flood Control Association (CCVFCA/Association) requests a more robust public discussion regarding the Central Valley Flood Protection Board's (Board) proposed submission of a Statement of No Objection letter on the Delta Conveyance Project (DCP). We believe important steps were skipped in regards to due diligence when the approval of a No Objection letter was scheduled as a consent item on the Board's March 27, 2020 agenda. As you know, Delta LMAs and residents have an expectation that the Board will provide public participation and transparency at each stage of decision-making and will engage in a higher level of attention to its roles, responsibilities, and independent authority with a project of this magnitude in order to ensure any alteration of the federally authorized Civil Works are not *"injurious to the public interest or impair the usefulness of the USACE project."*

The DWR presentation by Carrie Buckman at the February meeting was the same information shared statewide regarding water supply benefits, rather than a description of the specific DCP facilities and construction activities anticipated to impact the Sacramento River Flood Control Project (SRFCP) facilities. Following the DCP presentation, DWR Program Manager Katherine Marquez, provided a presentation on the negative declaration prepared under CEQA for numerous drilling locations on and next to SRFCP levees to investigate soils where DCP facilities will be constructed. This was a missed opportunity for the Board staff to follow up with a presentation regarding their review of the DCP project and potential SRFCP impacts, and to explain the purpose of Statement of No Objection letter with an opportunity for the public to provide input. Then the Board could have provided direction to staff on the content of the No Objection letter.

Instead, the proposed letter presented at the March meeting appears to reflect the perspective of the project proponent rather than the Board's independent, expert determination of potential impacts to the SRFCP and LMA performance of OMRR&R during a 14-year construction

period. A few examples of potential risks to the stability of levees that Delta LMAs are concerned about are:

- ***Intakes and Barge Loading Docks*** – Two intakes and multiple docks will be built on several levees, encroaching into the waterways and reducing existing flood flow capacity; which could result in overtopping of levees if they are not raised by DCP proponents prior to the dock and intake installations.
- ***Hydrodynamic and Hydraulic Changes*** – Each of the proposed intakes have 10 times the diversion capacity of any urban intakes in the Delta and are located within a mile of each other, which will increase the level of scouring and erosion of levees on both sides of the Sacramento River, creating increased LMA costs for levee and drainage O&M.
- ***Raising or Setback of Levees*** – Pursuant to the USACE’s EC 1165-2-220 (Sec. 12(a)(2)), “*proposed alterations that will result in substantial adverse changes in water surface profiles will not be approved.*” The encroachment into the waterway of cofferdams, intakes, and barge docks, may necessitate the raising of existing levees or the setback of levees in several locations, including the western levee on the Sacramento River near Clarksburg. Will each of these alterations be analyzed pursuant to separate 408 authorizations? Will the raising or setback of these levees be completed prior to installation of intakes and barge loading docks?
- ***Dewatering*** – During DCP construction, there will be extensive dewatering of large areas behind levees that will last several years, which may result in levee instability. In 2014, DWR investigated levee cracking on Grand Island that occurred from water table being lowered due to Mother Nature (drought), so this impact is not theoretical. The dewatering effects on the levees during the recent drought were mild compared to having dewatering pumps placed every 50 to 75 feet around the entire perimeter of multiple construction sites, each pumping between 240 to 10,500 gallons per minute, and estimated to lower groundwater between 10-20 feet for a 2,600-foot radius from each pump.
- ***Pile Driving*** – The vibrations from intense, concurrent, and persistent pile driving at numerous locations may cause instability of Delta levees.
- ***Truck Traffic*** – Vibration from a large fleet of muck trucks and other construction equipment traveling multiple daily trips over levees may cause instability of levees, especially when combined with concurrent vibrations from pile driving and dewatering.

The wording in the Board’s letter presented at the March meeting is confusing and requires clarification. Section 6(d) of EC 1165-2-220 says that a request for 408 permission can originate with the non-federal sponsor (Board) or an independent requester (DWR in the case of the DCP). A “Statement of No Objection” is required if the requester is *not* the non-federal sponsor (Board). Based on the wording of the “No Objection” letter, it is unclear whether DWR or the CVFPB is the “requester” as defined in Section 6(d). Following is wording in the letter that is confusing:

- “*for the joint review of possible alterations to the Delta Conveyance project*” (paragraph 1) – Do you mean joint review by the Corps and the Board? Did you mean alterations to the federally authorized Civil Works (SRFCP)?

- “*As the non-federal sponsor for the project, the Board is*” (paragraph 2) – This wording makes it appear the Board is the sponsor of the Delta Conveyance Project itself. Do you mean the Board is the non-federal sponsor of the federally authorized Civil Works (SRFCP) project? Clarification of which project is being referred by “the project” is necessary.
- “*a joint review of possible alterations for the proposed project.*” (paragraph 5) – What is “the proposed project” referring to? Alterations of the federally authorized Civil Works (SRFCP)?
- “*The Board, on behalf of DWR, will seek approval from the USACE*” (paragraph 5) – This sounds like the Board is the requester, because it would be seeking approval. This doesn’t make sense, because a “Statement of No Objection” is not necessary if the non-federal sponsor of the federally authorized Civil Works is the requester.
- “*acting through the Board, will accept the altered project for operation and maintenance*” (paragraph 6) – Is “altered project” referring to the federally authorized Civil Works project (SRFCP) or to the DCP? Does “operation and maintenance” refer to the SRFCP levee or to the diversion intakes, barge docks or other water conveyance facilities proposed in the DCP? This entire sentence is very confusing in terms of roles of responsibilities for O&M as well as whether the Board or DWR is accepting responsibility and liability for completed DCP facilities.

Approval of a No Objection letter should *not* be treated as a perfunctory action, because there is nothing ministerial about initiating an early 408 review of the most extensive alteration of the SRFCP proposed since it was originally constructed, including the numerous construction activities occurring over a 14-year period that will interfere with the ability of several Local Maintaining Agencies (LMAs) to perform their inspection, operation, maintenance, improvement, repair, and floodfighting duties. This is especially true when an alteration project is conceptual and the full scope of the alterations and construction activities are not yet known because an Environmental Impact Report (EIR) has not been released for public review; and is also true when related exploratory geotechnical projects entail additional drilling through and adjacent to SRFCP levees.

Under §408 (b)(1)(A), the review of proposed alterations is expected to occur *concurrently* with NEPA review and approval. At this time, no EIR has been released pursuant to CEQA, and the USACE said at the March Board meeting that there is no federal lead agency identified to even initiate NEPA review. While the issuance of a Statement of No Objection is contained in the portion of the USACE’s EC 1165-2-220 discussing early actions, it does not indicate when it should be submitted. Instead, it leaves the timing decision to the non-federal sponsor since it is a confirmation by the non-federal sponsor that it in fact has a full understanding of the scope of alterations proposed by a project seeking 408 authorization. The EC says the Statement of No Objection is necessary because the non-federal sponsors have operation and maintenance responsibilities; have a cost-share investment in the federally authorized Civil Works project (SRFCP); and/or hold the real property for the USACE project. Nothing in the Board’s letter addresses any of these three issues, but instead merely lists a few of the project components impacting the SRFCP and repeats benefits promoted by DWR.

In the case of the DCP, the potential impacts to the SRFCP, LMA performance of OMRR&R, and general flood protection in the Delta are unknown at this time because those details are not provided in a Notice of Preparation. With a project that is only at a 10% conceptual design, questions about the issuance of a Statement of No Objection at this time abound. For instance:

- What is the process that is triggered once the No Objection letter is sent to the USACE? What role will the Board have in that process?
- Will the letter initiate a discussion of whether the DCP review will be conducted under USACE Multi-Phased Review? If yes, this approach *cannot* be used to piecemeal the evaluation of effects of the proposed alteration and requires the establishment of pre-determined milestones, with the USACE District determining if the requester can proceed to the next milestone or not. In addition, assessing effects to the environment, public interest, and the USACE project *must* consider the proposed alteration as a whole according to EC guidelines.
- If 408 consultation is initiated when the proposed alteration project is still at a conceptual level of design, how will the Board keep the public updated on the issues being addressed in this process?
- Will each of the individual alterations of the SRFCP proposed in the DCP require separate 408 authorizations?
- What, if any, additional OMRR&R responsibilities does the Board anticipate accepting upon completion of the DCP? Does the Board anticipate changes to the O&M Manuals as a result of the constructed alteration?
- Will LMAs have higher O&M costs when each of the alterations are completed? Will project proponents pay for the increase in LMA costs related to changes such as drainage and levee erosion?
- Will the Board's existing permit fees be sufficient to cover staff costs for participating in 408 review or will a funding agreement need to be executed with project proponents to pay for Board's review costs?

Without the ability of the CVFPB staff to review the details of proposed facilities and construction activities in an EIR, the Board is merely speculating on the potential risk to the SRFCP and unable to confirm knowledge of how proposed alterations and construction activities will affect function of the SRFCP and performance of OMRR&R. This project is already in year 14 of planning, but only at a 10% conceptual level of design. It is reasonable to question why a Statement of No Objection is being considered on a project that has not yet released an EIR or EIS with a detailed project and construction description. What's the rush? To provide a more robust public discussion, the Association encourages the Board to consider covering the following topics when this item is agendaized again:

- **Awareness** – Submission of a Statement of No Objection is confirmation by the non-federal sponsor that it is in fact aware of the full scope of proposed alteration of the federally authorized Civil Works for which it is responsible and liable. Please describe the Board's evaluation of proposed DCP alterations and construction activities that was conducted prior to proposing a No Objection letter.

- **Funding** – How much staff will be dedicated to review of this project and for how long? Will the Board’s encroachment fees cover the costs of this staff review? Does the Board need to obtain additional funding to hire new staff?
- **Bandwidth** - The public should be afforded the opportunity to understand how early consultation on DCP will affect the Board’s workload and ability to issue permits. Stakeholders are also interested in hearing more information about what happens in terms of process and public participation once the letter is submitted. How many years of review are expected with a project that is only at a 10% conceptual design level? How will early consultation on the largest alteration of the SRFCP affect the Board’s workload and ability to issue other permits in a timely manner? How will Board’s other activities such as enforcement be affected? Should new staff be in place before submitting a Statement of No Objection letter? Stakeholders are also interested in hearing more information about what happens in terms of process and public participation once the letter is submitted.
- **Liability** – What, if any, additional liability for O&M is the Board accepting?
- **LMA Impacts** – How many Reclamation Districts will have a long-term disruption of their OMRR&R and floodfighting activities due to DCP’s 14-year construction? What types of drainage and levee impacts will the LMAs be burdened with and who is paying for these impacts? Will these be annual impacts during the 14-year construction? Will LMAs be burdened with additional costs for OMRR&R during construction or after project completion and is project proponent paying?
- **Timing** – When it comes to a non-federal sponsor proclaiming No Objection, there is a difference between early and too early. What is reason for submitting letter now? Why not wait for release of an EIR with design and construction details necessary to determine flood system and LMA impacts?

In closing, there is nothing routine about a project of this size with so many potential impacts to the SRFCP, OMRR&R, emergency response, and general flood protection in the Delta. Currently, there is a covenant of trust between the CVFPB and the LMAs that have agreed to perform O&M for the SRFCP facilities. As such, there are expectations from the LMAs that the Board will exercise the highest level of due diligence and public transparency when faced with a project proposing not only significant alteration of the SRFCP itself, but also risks associated with construction activities over a 14-year period that will interfere with the performance of OMRR&R and increase LMA costs. The true scope of the potential impacts is unknown at this time because those details are not available in a Notice of Preparation. Before prematurely proceeding with approval of a letter, CCVFCA encourages the Board to engage in a more robust public discussion. Thank you for your consideration.

Sincerely,



Melinda Terry,  
Executive Director