

**Memorandum of Understanding
Regarding
Feather River Regional Flood Planning
and the
Environmental Impact Statement/Environmental Impact Report
for the
Feather River West Levee Project**

This Memorandum of Understanding (MOU) is by and among the Sutter Butte Flood Control Agency (SBFCA), American Rivers, and other parties who may later execute this MOU. American Rivers and any other non-governmental organizations who later sign this MOU shall be collectively referred to as the NGOs.

1. **Recitals.** This MOU is executed in light of the following facts:
 - 1.1. The Feather River West Levee Project (FRWLP) is a public safety project that directly impacts the lives and livelihoods of approximately 88,000 people in an economically disadvantaged community that has suffered numerous failures of the Feather River west levee, including the deadly and devastating 1955 flood.
 - 1.2. On February 15, 2013, thirteen non-governmental organizations (the Commentors) sent a comment letter to SBFCA and the U.S. Army Corps of Engineers on the public draft of the FRWLP environmental impact report/environmental impact statement (EIS/EIR).
 - 1.3. The comment letter raised questions about the adequacy of the EIS/EIR and also raised concerns that SBFCA's project does not advance environmental restoration or sufficiently reduce flood risk due to the largely "fix-in-place" philosophy of the FRWLP.
 - 1.4. SBFCA deliberately structured the FRWLP to, where possible, be contained within the current levee footprint to simplify regulatory approvals, result in the least amount of land acquisition, minimize environmental impacts, and provide the greatest flood damage reduction benefit at the least cost.
 - 1.5. The NGOs desire to work with SBFCA to advance a multi-benefit flood management program that advances the objectives of the CVFPP and serves as a model for flood management across the state and nation.
 - 1.6. SBFCA is interested in multi-benefit flood management projects where those projects are cost effective, fundable, and provide flood protection benefits to the Sutter Basin.
 - 1.7. SBFCA acknowledges that additional elements of a multi-objective approach for the Feather River watershed beyond the FRWLP, such as are described herein, would further reduce flood risk to the Sutter Basin, mitigate for past degradation of the Feather River ecosystem from facilities of the State Plan of Flood Control, and advance the objectives of the Central Valley Flood Protection Plan (CVFPP).

- 1.8. The Feather River Regional Flood Management Plan (RFMP) is a partnership with Yuba County Water Agency, Three Rivers Levee Improvement Agency, Marysville Levee Commission, SBFCA, and other stakeholders with the charge of developing a broadly supported flood management plan for the Feather River region that aligns with the CVFPP and qualifies projects for future state and federal funding.
 - 1.9. There is a value to SBFCA to having a commitment from the Commentors that they will not challenge the FRWLP DEIR/DEIS and will support the FRWLP. There is a value to the Commentors from SBFCA making certain commitments regarding future ecosystem restoration projects. There is a value to all partners in active participation in the Feather River RFMP.
 - 1.10. A purpose of this MOU is to form a partnership between SBFCA and the NGOs to advance multi-benefit flood management projects that will benefit the communities along the Feather River
2. **Commitments of Sutter Butte Flood Control Agency.** By this MOU, SBFCA commits to make good faith efforts as follows.
- 2.1. **Commenting on Funding Guidelines.** SBFCA agrees to provide comments to any draft funding guidelines issued by the California Department of Water Resources for multi-objective projects which could be implemented by SBFCA in the Sutter Basin. Along with its other comments, SBFCA shall advocate for DWR to provide funding for multi-benefit projects that advance the objectives of the CVFPP including ecosystem restoration, improved public access, acquisition of easements from voluntary sellers to limit urban development of floodplains, and allow for the future expansion of floodways where necessary to protect public safety and where there is local support for the project. SBFCA's comments shall advocate that these elements be funded by DWR without an increased local-cost share.
 - 2.2. **Applications for Funding.** SBFCA agrees to seek funding for the list of projects listed in sections 2.2 and 2.4 (if applicable), only to the extent that SBFCA would not incur any net increase in costs associated with implementing such projects beyond the costs of the FRWLP. In doing so, SBFCA shall first coordinate, to the extent possible, with one or more representative NGOs to make the NGOs aware of SBFCA's efforts. In particular, SBFCA agrees to work with the NGOs to send a joint letter to the Department of Water Resources within 30 days of the effective date of this MOU renewing a request for funding for the projects identified in Sections 2.2.2. and 2.2.4. SBFCA shall seek additional funding for design, permitting, and implementation of elements identified in other subsections of sections 2.2 and 2.4 (if applicable) when it requests additional funds from DWR for subsequent phases of the FRWLP. Implementation of the following projects would help mitigate for years of alterations to the Feather River ecosystem from the State Plan of Flood Control facilities:

- 2.2.1. In partnership with Three Rivers Levee Improvement Authority (TRLIA), enhancing and expanding restoration as part of a levee setback area on the east side of the Feather River to serve as habitat mitigation as a near-term component of the FRWLP and other projects, and as described in the preliminarily approved DWR FESSRO grant application signed by SBFCA;
 - 2.2.2. Developing and implementing a multi-benefit project in the Oroville Wildlife Area to decrease water surface elevations in the Feather River, restore and improve floodplain habitat, improve flood operations, and reduce maintenance costs;
 - 2.2.3. Creation of approximately 20 acres of riparian habitat by SBFCA in addition to the approximately 20 acres already created by Levee District #1;
 - 2.2.4. A multi-benefit project at Abbott Lake that would provide levee borrow material to support levee reconstruction while modifying the floodplain surface to be beneficial to fish and wildlife;
 - 2.2.5. The potential for a setback levee south of Laurel Avenue if there is a willing seller and local support and the project would help achieve 100-year food protection for the southern portion of the basin, all in order to create a mosaic of riparian floodplain habitat and agriculturally productive land that provides flood management benefits for the Sutter Basin, along with acquisition of any necessary easements or land necessary to implement a setback;
 - 2.2.6. An environmental restoration project located at Nelson Slough as identified by the Lower Feather River Corridor Management Plan;
 - 2.2.7. A State-funded program to purchase agricultural easements from willing-sellers to promote agriculture and to meet ecosystem restoration goals identified in the CVFPP and as a public safety strategy to manage long-term risk in the floodplain.
 - 2.2.8. Such other projects which the NGOs identify to SBFCA as providing environmental restoration and flood management opportunities within SBFCA's area of jurisdiction and for which SBFCA concurs.
- 2.3. **Effect of FEMA Regulations on Agriculture.** SBFCA agrees to pursue appropriate changes in the National Flood Insurance Program that will promote agriculture continuing to thrive in protected floodplains recognizing that agriculture is often the best way to manage risk in the levee-protected floodplains of California's Central Valley.
 - 2.4. **Public Access.** SBFCA does not operate and maintain levees and therefore does not promote or limit public access; nor does the FRWLP propose to alter existing

access. SBFCA shall, through its participation in the Feather River RFMP, consider and work on public access issues.

2.5. **Coordination.** SBFCA agrees to meet with the NGOs on a regular basis to discuss implementation of the commitments made in this MOU.

3. **Commitments of the NGOs.** By this MOU, the NGOs commit to make good faith efforts as follows:

3.1. **Support for FRWLP.** The NGOs agree to promptly execute and send the letter attached to this MOU as Attachment 1 and to promptly facilitate execution of the letter by the Commentors. Subject to the limitations in Section 4.2, the NGOs further agree that: (i) the FRWLP is an indispensable, no-regrets part of any program to reduce flood risk in the SBFCA planning area, and (ii) they will support the FRWLP in the future, if asked by SBFCA, in any legislative, administrative, or judicial forum, including the Central Valley Flood Protection Board.

3.2. **Agreement to Not Sue.** The NGOs agree to not bring any action in state or federal court under any applicable State or Federal laws challenging the adoption of the EIS/EIR and, subject to the limitation in Section 4.2, implementation of the FRWLP.

3.3. **Support and Efforts to Locate Funding.** The NGOs agree to cooperate with SBFCA in seeking funding from the California Department of Water Resources (DWR) for the FRWLP and the projects identified under Section 2.2, provided that DWR or other government agencies elect to fund some of the projects contained in Section 2.2. The NGOs further agree to investigate and pursue funding for the projects identified under Section 2.2 from sources other than the California Department of Water Resources.

3.4. **Coordination.** The NGOs agree to appoint representative(s) to meet with SBFCA on a regular basis to discuss implementation of the commitments made in this MOU.

4. **Miscellaneous Provisions.**

4.1. **Amendment.** This MOU may be amended only by further written instrument executed by all Parties. Other non-governmental organizations may execute this MOU upon approval by American Rivers and SBFCA, which approval shall not be unreasonably withheld.


4.2. **Dispute Resolution.** The Parties agree to use good faith efforts to resolve any disputes that may arise in the implementation of this MOU. If any party to this MOU believes that another party is not satisfying its obligations under the MOU, then the complaining party may provide written notice of the concern along with a request that the other party cure the concern within a reasonable and stated period of time. If, upon expiration of the period set for cure, the complaining party does

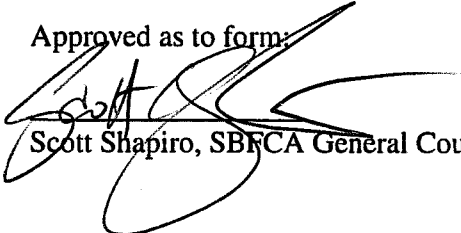
not believe that the concern has been cured, then the complaining party may provide written notice that it is withdrawing from the MOU, and the complaining party shall thereafter have no further obligations to comply with the provisions of this MOU.

- 4.3. **Counterparts.** This MOU may be executed in counterparts.
- 4.4. **Term.** Unless terminated earlier or extended longer pursuant to Section 4.1, this MOU shall terminate upon the adoption of the 2022 update of the CVFPP.
- 4.5. **Effective Date.** This MOU shall be effective upon the following two actions: (i) execution of this MOU by American Rivers and SBFCA, and (ii) execution of the letter contained in Attachment 1 by all Commentors before 8:00 am on Friday, March 15, 2013. In the event that not all Commentors execute the letter contained in Attachment 1 before 8:00 am on Friday, March 15, SBFCA shall have the right to withdraw from the MOU upon written notice to the NGOs.

This MOU is executed by the Parties as follows:

Dated: 3/15/13

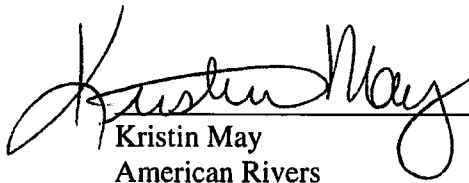

Michael Inamine
SBFCA

Approved as to form:

Scott Shapiro, SBFCA General Counsel

Dated: _____

John Cain
American Rivers

Dated: 3/15/13


Kristin May
American Rivers

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