

**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 (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 EIR/EIS 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. 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, 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 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. Restoration of an abandoned Marysville sewer treatment facility site that has been identified by the NGOs and for which they will provide information to SBFCA for review;
 - 2.2.6. The potential for a setback levee south of Laurel Avenue 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;
 - 2.2.7. An environmental restoration project located at Nelson Slough as identified by the NGOs and for which they will provide information to SBFCA for review;
 - 2.2.8. A State-funded program to purchase agricultural easements from willing-sellers to promote agriculture, wildlife conservation, and public safety as a strategy to manage long-term risk in the floodplain.
 - 2.2.9. 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 levee-protected floodplains.

- 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. However, within its limited coordination role, SBFCA shall do the following in consideration of the NGOs' interests in public access:
 - 2.4.1. Recognizing that SBFCA does not have any legal ownership of the following sites, SBFCA agrees to work with the relevant entities to seek to negotiate public access: (i) to the Starr Bend Mitigation and Restoration Area, (ii) to Abbott Lake, and (iii) to and around the Sunset Weir including any necessary signage. Public access negotiated under this Section 2.4 will be limited as appropriate in light of legitimate flood control, safety, mitigation, and restoration needs.
 - 2.4.2. As part of the Feather River RFMP, SBFCA agrees to (i) participate in a study to identify those locations where, due to the existence of a public road, or the approach of the high-water mark to the levee toe, there is presently legal access to the river from the dry side of the levee; and (ii) pursue recreational opportunities along the Feather River.
- 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 limitation 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 not to delay, obstruct or bring any action in state or federal court, under any applicable law, challenging: (i) the adoption of the EIS/EIR or (ii) 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: _____

Michael Inamine
SBFCA

Approved as to form:

Scott Shapiro, SBFCA General Counsel

Dated: _____

John Cain
American Rivers

Dated: _____

Name:
Organization:

Attachment 1

March 14, 2013

Michael Inamine, Executive Director
Sutter Butte Flood Control Agency
1227 Bridge Street, Suite C
Yuba City, CA 95991

RE: February 15, 2013 Comment Letter on Feather River West Levee Project

Dear Mr. Inamine:

On behalf of the organizations that submitted a comment letter on the Draft Environmental Impact Report/Statement (DEIR/DEIS) for the Feather River West Levee Project (FRWLP), we appreciate the time that you and the Sutter Butte Flood Control Agency (SBFCA) staff have taken to meet with representatives from the NGO community and provide more information about the project.

Based on the information provided in those meetings and our related discussions, the nature of our concerns about the project has changed, and this letter is intended to clarify those changes.

1. Growth

We have no additional comments on this topic. We look forward to further discussion and response to this comment.

2. Risks to Downstream Communities

Our February 15 letter expressed concern that the project may increase flood risk to local and downstream communities. First, this comment was based on the assumption that the project extends to the south as far as the Sutter Bypass. Through our conversations it is now clear that the FRWLP does not involve 200-year protection south of Yuba City. Finally, we understand that the FRWLP is not a levee improvement project; the project partially rehabilitates the levee in order to restore protection from flooding for residents of Butte and Sutter Counties. It does not improve the levee to a standard above that which was assumed to exist before the development of new criteria for levee seepage. Before SBFCA implements any future project which may propose improvements downstream of Laurel Avenue, we request a briefing from SBFCA on the hydraulic impacts (if any) of such an improvement to better understand the issue.

3. Adequacy of Hydraulic Information

Our February 15 comment letter stated that the DEIR/DEIS lacked sufficient hydraulic information to support the document's alternatives analysis. SBFCA staff has provided a copy of the Sutter Basin Area Plan as well as clarification on flood inundation maps. The FRWLP's

purpose is now more clear (i.e., to partially rehabilitate the Feather River levee to protect residents from flooding). The alternatives were developed based on varying measures that could resolve deficiencies in the Feather River levee, rather than on the hydraulic analysis underlying the Engineer's Report that supports SBFCA's assessment district. There is no need for reissuance of the DEIR/DEIS based on this issue.

4. Executive Order 11988

We have no additional comments on this topic. We look forward to further discussion and response to this comment.

5. Range of Alternatives

Our February 15 comment letter expressed concerns about whether the DEIR considered a reasonable range of alternatives for protection of public safety. Our letter proposed that SBFCA consider alternatives such as house elevation, ring levees, etc. Based on our meetings, and a further review of screened-out alternatives not discussed in the EIR/EIS, it is now clear that the purpose of the project is reducing flood risk for the SBFCA area by addressing known deficiencies along the Feather River along its existing alignment and does not preclude additional measures to reduce flood risk or advance the objectives of the CVFPP. With this understanding, and after further review of the DEIR/DEIS, we now conclude that the range of alternatives analyzed in the document is adequate.

6. Multi-Benefit Approach

We have no additional comments on this topic. We look forward to further discussion and response to this comment.

7. Public Access

We have no additional comments on this topic. We look forward to further discussion and response to this comment.

8. Climate Change

We have no additional comments on this topic. We look forward to further discussion and response to this comment.

9. Project Performance with Other Foreseeable Projects

Our February 15 comment letter expressed concerns that the DEIR/DEIS did not evaluate the performance of alternatives in combination with existing and foreseeable expanded bypass projects. This comment was based on the assumption that the FRWLP extended south to the Sutter Bypass and that the proposed measures were highly sensitive to water surface elevation. Because the FRWLP will not preclude potential expanded bypasses along the lower Feather River and the Sutter Bypass, and with the knowledge that the geotechnical deficiencies are not highly sensitive to water surface elevation, this comment is no longer applicable.

10. Cumulative Effects on Fish and Wildlife Resources

From our meetings, we now understand SBFCA’s commitment to multi-benefit projects, including ecosystem restoration for fish and wildlife habitat, and the habitat that will be created as a direct result of the FRWLP at the Star Bend site. We further understand the importance of the FRWLP in providing the foundation for other restoration along the Feather River corridor. The SBFCA has agreed to enter into an MOU and work with the NGO community to advance a number of multi-benefit flood management projects, which when completed, will partially mitigate for the cumulative effects on fish and wildlife resources from construction and operation of facilities of the State Plan of Flood Control. Our organizations look forward to collaborating with SBFCA, its regional partners, state agencies, and the fish and wildlife agencies on these activities. We specifically offer technical assistance through our floodplain enhancement tool and implementation assistance in finding funding partners and programs.

Conclusion

Our organizations appreciate the additional information and clarifications SBFCA staff have offered and as described in the MOU between American Rivers and SBFCA, and are therefore pleased to support SBFCA’s Feather River West Levee Project as well as SBFCA’s related efforts to enhance fish and wildlife habitat in the Feather River corridor. Our concerns as expressed in our February 15 letter have been addressed by SBFCA staff and commitments provided by SBFCA in the MOU with American Rivers. As a result we agree that the DEIR/DEIS fulfills SBFCA’s obligation under CEQA and NEPA to disclose and mitigate the project’s anticipated impacts on the environment, and we agree not to bring a legal challenge to the FRWLP based on CEQA, NEPA, or other State or Federal resource statutes. We applaud SBFCA’s leadership role in garnering the resources necessary to advance flood management in the Sutter Basin and reiterate our desire to work constructively with SBFCA to expedite sustainable flood protection for the project area.

Sincerely,

Caleb Dardick
South Yuba River
Citizens League

John Cain
American Rivers

Curtis Knight
California Trout

Diana Jacobs
Sacramento River
Preservation Trust

Chandra Ferrari
Trout Unlimited

Dave Steindorf
American Whitewater

Mark Hennelly
California Waterfowl Assn.

Gary Bobker
The Bay Institute

Meghan Hertel
Audubon California

Monty Schmitt
NRDC

Kim Delfino
Defenders of Wildlife

Ron Stork
Friends of the River

Jonas Minton
Planning and Conservation
League