




Director's Decision Memo (DDM)

TO: Mark W. Cowin, Director

FROM:  Gail Newton, Chief
FloodSAFE Environmental Stewardship
and Statewide Resources Office

DATE: October 21, 2010

SUBJECT: North Delta Flood Control and Ecosystem Restoration Project
SCH# 2003012112 - Final Environmental Impact Report and Decisions

Request for Approval Request for Action

Request for Discussion

TIME FACTOR: Important but not urgent.

RECOMMENDATION:

Certify the Final Environmental Impact Report (EIR) for the North Delta Flood Control and Ecosystem Restoration Project (Project) and consider the decisions discussed below with regard to carrying out Alternative 1-A of Group I of the Project.

SUMMARY:

The Project consists of flood control and habitat improvements in the area of the North Delta where the Mokelumne River, Consumnes River, Dry Creek and Morrison Creek converge. Flood flows and high water conditions in this area threaten levees, bridges and roadways. Alternative 1-A of Group I of the North Delta Project will provide tidal marsh, floodplain, and terrestrial habitats on McCormack-Williamson Tract (MWT) and Grizzly Slough.

The purpose of the Project is to implement flood control improvements in a manner that benefits aquatic and terrestrial habitats, species, and ecological processes. Flood control improvements are needed to reduce damage to land uses, infrastructure, and the Bay-Delta ecosystem resulting from overflows caused by insufficient channel capacities and catastrophic levee failures in the Project study area. The coequal objectives of flood protection and ecosystem restoration proposed for the North Delta area with the Project are consistent with the goals of multiple state and federal planning

efforts including the Central Valley Flood Protection Plan, the Bay Delta Conservation Plan, the US Army Corps of Engineers (USACE) Delta Islands Levee Feasibility Study, and the USACE CALFED Levee Stability Program.

The Department of Water Resources (Department) has independently prepared an EIR for the Project that describes, analyzes, and discusses all the proposed Project's potential environmental impacts raised in the conceptual plan, scoping meetings, and public comments. The final EIR for the Project includes the Draft EIR (DEIR), the Final EIR (FEIR) and any appendices, including the comments received on the DEIR during the review period and the Department's responses to those comments. Following public release of the DEIR in January 2008, twelve comment letters were received. The FEIR includes those comments and the Department's responses to those comments. The most significant comments related to the concerns about a potential for increased underseepage on neighboring islands associated with the construction of Staten Island detention basins, efficacy of the hydraulic modeling results, and production and release of methylmercury. The Department sent its Response to Comments to each commenting entity on July 9, 2010. Because of the lag time between the DEIR and the FEIR, the FEIR includes non-mandatory sections to remind the reader of the prior years of efforts, modeling, and public interaction, thereby minimizing the need to refer back to the DEIR.

CEQA requires that public agencies like the Department make a number of determinations when approving a proposed project which could have a significant impact on the environment. The first step is certification of the FEIR. Following certification of the FEIR, the Department can decide whether to approve or carry out the project consistent with the requirements of CEQA. The decisions attached complete the review and consideration required by CEQA for certification of the FEIR for the Project and for carrying out the part of the Project called Alternative 1-A of Group I (and No Action Alternative for Group II).

DISCUSSION:

Levees on MWT have failed on seven occasions due to high water conditions and overtopping, resulting in the inundation of land and property damage. Levee failures on McCormack Williamson Tract have also caused flood flow surges in the North and South Forks of the Mokelumne River downstream of the tract. These surges followed the inundation of the tract and the subsequent failure of the tract's downstream levees due to overtopping from the tract's flooded interior.

Flood surges emanating from MWT have also caused the failure of levees on the adjacent Dead Horse Island and have damaged other levees downstream. In addition, flood surges have resulted in the flooding of roadways, extensive damage to a nearby marina, and have threatened the New Hope bridge. The bridge was threatened during the Flood of 1997 when a flood surge emanating from MWT damaged a nearby marina and a large vessel subsequently lost its mooring and became impinged on the bridge. The bridge serves as the main access to Staten Island and as a flood emergency evacuation route.

Alternatives 1-A and the No Action Alternative for the Group II actions are identified as the environmentally superior alternatives based on the analysis in the Draft EIR, and comments received during the public comment period and public hearing. These alternatives include the lowest levels of environmental impacts associated with construction and flood control improvements, and are the Alternatives proposed for implementation.

The purpose of the North Delta Project is to implement the Preferred Alternatives (Alternative 1-A and the No Action Alternative for the Group II actions) of the North Delta Flood Control and Ecosystem Restoration EIR. This project will implement important flood control improvements in the area of the North Delta where the Mokelumne River, Consumnes River, Dry Creek and Morrison Creek converge. Flood flows in the area threaten levees, bridges and roadways when levees on MWT are overtopped and a flood surge occurs. The proposed project will help regulate peak flood flows and prevent flood surges. It will also provide substantial aquatic and terrestrial habitat benefits. The project will create tidal, sub-tidal, aquatic, and terrestrial habitats benefiting species such as Sacramento splittail and Chinook salmon, a threatened species under the Endangered Species Act. The following projects elements are proposed for implementation over a six-year timeline:

MWT Element – This element combines North Delta flood surge reduction measures with the construction of habitat-friendly levees, floodplain restoration and the creation of freshwater tidal habitat on MWT. This element, and the Grizzly Slough element described below, will provide contiguous habitat and a riparian corridor along the downstream portion of the Cosumnes Preserve. The MWT property is currently owned and managed by The Nature Conservancy (TNC). TNC purchased the property using a CALFED grant and supports the Project.

Grizzly Slough Element – This element consists of the breaching of the Grizzly and Bear Slough levees near MWT to help attenuate peak flood flows and maximize floodplain habitat on DWR-owned property.

The United States Army Corps of Engineers (USACE) is planning to augment state bond funds for the implementation of this project. It is anticipated that the USACE CALFED Levee Stability Program will provide up to 65% of the project construction costs for actions proposed on MWT, Dead Horse Island, and for downstream levee modifications on Tyler and Staten Islands. These additional funds would allow the full build out of the project and the completion of all project features for the selected Project.

PRO-CON ARGUMENTS:

Pros

Failure to approve this Project will result in continued flooding and flood-related damages, on-going degradation of habitats that support various life stages of aquatic and terrestrial species in the North Delta, and the loss of outside funds requiring a cost match. This project provides much-needed flood protection while making significant habitat improvements in the North Delta.

The project has also been identified by the processes involved in preparation of the Bay Delta Conservation Plan and the Central Valley Flood Protection Plan as a priority, early implementation project. Project implementation will provide floodplain spawning habitat for the Sacramento splittail and floodplain rearing habitat for Chinook salmon. This project provides a significant opportunity to partner with other State and federal agencies and make use of non-state funds. The project would also fulfill previous investments of public funds for property acquisition and initial improvements on MWT.

Cons

The costs associated with project are: (1) implementation, (2) mitigation, and (3) monitoring prior to, during, and post-construction. It is anticipated that the USACE CALFED Levee Stability Program will

provide up to 65% of the project construction costs for actions proposed on MWT, Dead Horse Island, and for downstream levee modifications on Tyler and Staten Islands. This will be augmented with state bond (ie) funds provided by through a five-year Budget Change Proposal (BCP) request; \$5 million for each fiscal year from 10-11 through 13-14 and \$8 million for FY 14-15 for a total of \$28 million. Funding for FY 10-11 in the amount of \$5 million has been approved.

Estimated Cost


The total estimated cost for build out of the actions proposed with Preferred Alternative 1-A (no cost for the No Action Alternative for Group II Actions) is \$44 million.

The estimated cost of the MWT component of the project, which combines North Delta flood surge reduction measures with the construction of habitat-friendly levees, floodplain restoration and the creation of freshwater tidal habitat on MWT, is \$25 million. It is anticipated that 65% of this total (approximately \$16 million) will be paid with federal funds through the USACE's CALFED Levee Stability Program. The cost estimate is preliminary and may be revised upon completion of the USACE's Project Implementation Report. This will be augmented with state bond funds provided through a five-year Budget Change Proposal (BCP) request; \$5 million for each fiscal year from 10-11 through 13-14 and \$8 million for FY 14-15 for a total of \$28 million. Funding for FY 10-11 in the amount of \$5 million has been approved.

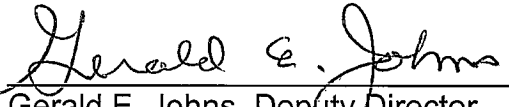
The estimated cost of the Grizzly Slough component, which consists of the breaching of the Grizzly and Bear Slough levees near MWT to maximize floodplain habitat on DWR-owned property, is an additional \$19 million.

RECOMMENDED ACTION

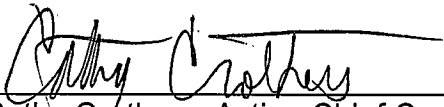
We recommend that after reviewing and considering the attached Final EIR, you certify the Final EIR and make the determinations included in the attached document "Decisions relating to the North Delta Flood Control and Ecosystem Restoration Project". If you make the decisions set forth in the Decision Document, please call Matt Reeve, Program Manager at 916-651-7014 for distribution. You may also contact Mr. Reeve if you have any questions or need additional information about the FEIR or the proposed project



10/24/10
Gail Newton, Chief,
FloodSAFE Environmental Stewardship
and Statewide Resources Office



10/21/10
Gerald E. Johns, Deputy Director
Delta and Statewide Water
Management



Cathy Crothers, Acting Chief Counsel

Attachments:


Decisions Relating to the North Delta Flood Control and Ecosystem Restoration Project

SCH# 2003012112

If after review and consideration of the final EIR you decide that the Department should certify the final EIR for the Project and approve or carry out Alternative 1-A of Group I and the No Action Alternative of Group II of the North Delta Project, you should indicate that decision by making the following determinations in the manner prescribed by Section 15091-15094 of the CEQA *Guidelines*:

1. *Section 15090(a) of the CEQA Guidelines states: "Prior to approving a project the lead agency shall certify that: (1) The final EIR has been completed in compliance with CEQA; 2) The final EIR was presented to the decision-making body of the lead agency and that the decision-making body reviewed and considered the information contained in the final EIR prior to approving the project; and (3) The final EIR reflects the lead agency's independent judgment and analysis".*

I certify that the final EIR attached as Appendix A, has been completed in compliance with CEQA, that the final EIR was presented to me in my capacity as the Department's decision-making body, and that the final EIR reflects the Department's independent judgment and analysis. I have reviewed and considered the information contained in the final EIR prior to approval of the project.


Mark W. Cowin, Director

11/3/2010
Date

2. *Section 15091(a) of the CEQA Guidelines states: "No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of the those significant effects, accompanied by a brief explanation of the rationale for each finding".*

I will adopt the Statement of Findings, attached as Exhibit B, which meets the requirements of CEQA *Guidelines* Section 15091. To the extent that these findings conclude that various mitigation measures are feasible and within the Department's responsibility and jurisdiction, I have directed the Department to implement these measures, thereby incorporating them as part of the proposed project.

3. *Section 15093(b) of the CEQA Guidelines states: "When the lead agency approves a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, the agency*

shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record”.

I will adopt the Statement of Overriding Considerations, attached as Exhibit C, which meets the requirements of CEQA *Guidelines* Section 15093.

4. *Section 15091(d) of the CEQA Guidelines requires the agency to “also adopt a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to avoid or substantially lessen significant environmental effects”.*

I will adopt the Mitigation, Monitoring and Reporting Program, attached as Exhibit D, which meets the requirements of CEQA *Guidelines* Section 15091(d).

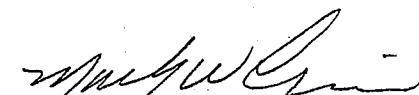
5. *CEQA Guidelines Sections 15092(a) and (b) describe the approval decision.*

After considering the final EIR, including the project alternatives, and in conjunction with making findings under CEQA *Guidelines* Section 15091, I approve Alternative 1-A of Group I and the No Action Alternative of Group II of the North Delta Project. My approval meets the requirements of CEQA *Guidelines* Sections 15092(a) and (b).

I have determined that:

The Department has eliminated or substantially lessened all significant effects on the environment where feasible as shown in the findings under CEQA *Guidelines* Section 15091, and

Any remaining significant effects on the environment found to be unavoidable under CEQA *Guidelines* Section 15091 are acceptable due to overriding concerns as described in CEQA *Guidelines* Section 15093.



Mark W. Cowin, Director

11/3/2010

Date

6. *CEQA Guidelines Section 15094 states that “[t]he lead agency shall file a notice of determination (NOD) within five working days after deciding to carry out or approve the project”.* Once you have signed the original NOD, it will be filed with the Office of Planning and Research and a copy will be kept with the project administrative record.

I will sign the Notice of Determination, attached as Exhibit E which meets the requirements of Section 15094.

Exhibit A: The final EIR for the North Delta Flood Control and Ecosystem Restoration Project which consists of a CD copy of the Draft Environmental Impact Report (DEIR) and hardcopy of the Final Environmental Impact Report (FEIR)

Exhibit B: North Delta Flood Control and Ecosystem Restoration Project – Statement of Findings

Exhibit C: North Delta Flood Control and Ecosystem Restoration Project - Statement of Overriding Considerations

Exhibit D: North Delta Flood Control and Ecosystem Restoration Project - Mitigation, Monitoring, and Reporting Program

Exhibit E: North Delta Flood Control and Ecosystem Restoration Project – Notice of Determination