



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street

San Francisco, CA 94105-3901

August 16, 2010

Ms. Elizabeth Holland  
Environmental Resources Branch  
U.S. Army Corps of Engineers  
Sacramento District  
1325 J Street, 10<sup>th</sup> Floor  
Sacramento, California 95814-2922

Subject: Draft Environmental Impact Statement (DEIS) for the Natomas Levee Improvement Program Phase 4b Landside Improvements Project (CEQ# 20100240)

The U.S. Environmental Protection Agency (EPA) has reviewed the above-referenced document pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act.

While we acknowledge the flood protection benefits of the proposed action for the current residents of the Natomas Basin, we have rated the DEIS as Environmental Concerns – Insufficient Information (EC-2, see enclosed "*Summary of Rating Definitions*") due to our concerns about air quality and indirect and induced growth.

EPA's primary concern regarding the subject DEIS is the applicability of conformity requirements under the Clean Air Act. We noted in our March 22, 2010 comments on the FEIS for Phase 4a of the Natomas Levee Improvement Project (NLIP) that "the State of California has requested, and EPA has proposed, a "severe" classification for this ozone nonattainment area." EPA finalized the severe classification, effective June 4, 2010. Because the Record of Decision (ROD) for Phase 4a was not certified before the effective date of the reclassification, the new conformity thresholds now apply to Phase 4a. Based on the FEIS, Phase 4a would exceed the recently reduced conformity threshold for 2011. Once conformity applies to a project, it applies to the entire project; thus, the applicability of conformity to Phase 4a would affect Phase 4b, as well.

EPA staff discussed the conformity issue with you and a Corps' contractor in several phone conversations. Following that, you provided a revised table of emissions in an email to Tom Kelly, of my staff, on August 11, 2010. The table reflects a revised construction schedule with additional reduction of nitrogen oxide emissions, from 20% to 40%. Based on that revised table, the Phase 4a emissions no longer appear to exceed the conformity threshold. If the Corps intends to pursue this revised construction schedule, commitments to do so should be included in the ROD for Phase 4a and in the FEIS and ROD for Phase 4b. If the Corps does not intend to pursue this revised construction schedule, the RODs and Phase 4b FEIS should address how conformity requirements will be met.

We appreciate the opportunity to review this DEIS. When the FEIS is released for public review, please send one hard copy and one CD ROM to the address above (mail code: CED-2). If you have any questions, please contact Tom Kelly, the lead reviewer for this project, at (415) 972-3856 or kelly.thomasp@epa.gov, or me at (415) 972-3521.

Sincerely,

/signed by Tom Kelly for/

Kathleen M. Goforth, Manager  
Environmental Review Office

Enclosures:

Summary of EPA Rating Definitions

Detailed Comments

cc: Jennifer Hobbs, U.S. Fish and wildlife Service  
Mike Hendrick, National Marine Fisheries Service  
Robert Solecki, Central Valley Regional Water Quality Control Board  
Jeff Drongesen, California Department of Fish and Game  
John Bassett, Sacramento Area Flood Control Agency  
Helen Thomson, Sacramento Area Council of Governments  
Karen Huss, Sacramento Metropolitan Air Quality Management District  
David A. Valler Jr., Feather River Air Quality Management District  
John Roberts, The Natomas Basin Conservancy

**EPA'S DETAILED DEIS COMMENTS ON DRAFT ENVIRONMENTAL IMPACT STATEMENT (DEIS) NATOMAS LEVEE IMPROVEMENT PHASE 4B LANDSIDE IMPROVEMENTS PROJECT (CEQ# 20100240) SACRAMENTO AND SUTTER COUNTY, CA, AUGUST 16, 2010**

**Air Quality**

The DEIS discusses the applicability of general conformity in Impact 4.11-b. For the proposed alternative, the DEIS states, “[w]ith mitigation, worst-case maximum annual emissions are below the *de minimis* [stat] thresholds and therefore would conform with the applicable SIP regional attainment goals (See Appendix F for detailed emission sources and assumptions)” (p.4-17). EPA does not agree with this conclusion. The general conformity thresholds for Volatile Organic Compounds (VOCs) and Nitrogen Oxides (NOx) were reduced, effective June 4, 2010 (75 FR 24409, May 5, 2010,), as noted in the DEIS, Table 4.11-4 and Appendix F. Since the Corps did not sign the ROD for Phase 4A prior to that date (p. ES-6), the new conformity limits apply to Phase 4a as well as 4b. Phase 4A emissions, described in Appendix F, exceed the current 25 tons per year general conformity threshold for NOx. Once conformity applies to a project, it is applicable to the entire project. So, if conformity applies to Phase 4A, it also applies to Phase 4B, regardless of the level of 4B emissions.

EPA staff raised this to the attention of the Corps and its contractor in several phone conversations. The Corps subsequently provided an alternative Table 21 that spread Phase 4a construction into 2012, and reduced NOx emissions, by 40%, to below the conformity threshold. Your contractor’s message<sup>1</sup> clarified that the reduced emissions will be achieved through vehicle emission controls, not emission credits or off-sets purchased from a local air district. The table also reflected other schedule changes for Phase 4b.

The revised table also showed reduced emissions for 2009 and 2010. Because 2009 is past and 2010 is more than half over, it is not clear how these emissions could be reduced.

Table 21 and Table 22, from Appendix F, contain differing emission estimates for 2010 and 2011. The Corps contractor clarified<sup>2</sup> that “the emission levels shown in Table 22 in Appendix F were not used in the analysis and should be considered extraneous.”

We also note the wording “would conform with the applicable SIP” (p. 4.11-17) is inappropriate. Such wording should be used only if the Corps is making an affirmative determination that the project conforms to the applicable SIP, pursuant to analysis showing that the project’s emissions will be over the *de minimis* applicability threshold.

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<sup>1</sup> “In Case You Were Interested” Message to Tom Kelly (EPA) from Gregory Wolffe (AECOM). 12 August 2010. Email.

<sup>2</sup> “Conference Call This Afternoon Re: Natomas.” Message to John Kelly (EPA) from Gregory Wolffe (AECOM). 29 July 2010. E-mail.

**Recommendation:**

The FEIS should describe and commit to project changes that reduce emissions below the general conformity applicability threshold. If the Corps will rely on extension of the project schedule, in accordance with the alternative Table 21 provided to EPA, that table and any supporting information should be included in the Phase 4a and 4b RODs and the Phase 4b FEIS.

Alternatively, the FEIS could include a conformity determination that includes both Phase 4a and 4b.

The FEIS should remove Table 22 from Appendix F.

The FEIS should include a footnote for Table 21, in Appendix F, explaining that 2010 air emissions, from Phase 3 of the project, were included in the phase 3 FEIS which was relied upon in the phase 3 ROD, prior to the conformity limit change from 50 to 25 tons per year. Therefore, 50 tons per year was the correct general conformity applicability threshold to apply to Phase 3 for VOC and NOx.

### Indirect and Growth Inducing Impacts

While the levees have been in place since 1915 (Table 1-2), currently the Natomas Basin (Basin) is subject to a building moratorium (p. 3-21). Without improvement of the levees, further development within the Basin will continue to be limited by the moratorium. The DEIS describes planned growth within the Natomas Basin of 60,000 dwellings and associated commercial and residential developments over the next two decades (p.2-81). The increase in emission of criteria pollutants from this development can cause health problems and further delay attainment of air quality standards set by the Clean Air Act.

The DEIS describes a regional blueprint for future growth in the Sacramento area, including the Natomas Basin, adopted by the Sacramento Area Council of Governments (SACOG) and Valley Vision (p. 2-16). EPA commends the Corps and Sacramento Area Flood Control Agency (SAFCA) for including the blueprint, a “unique regional visioning project . . . bringing smart growth principles . . . to growth projected in the Sacramento Region until 2050<sup>3</sup>.” EPA supports this effort for the people of the Sacramento area to “spend less time in their cars, spend less money on gas, and protect our air quality while improving our overall quality of life,” and we acknowledge the greenhouse gas benefits of the development recommended by the blueprint. Unfortunately, the DEIS does not commit to ensuring that future growth in the Basin is consistent with the blueprint.

The DEIS ultimately concludes, “the Phase 4b Project, while accommodating planned regional growth, is not growth inducing itself” (p.5-37). This distinction (accommodating growth vs. inducing growth) does not exist in NEPA regulations. Because the levee improvements will allow future growth in the basin, which is not currently allowed, the project will induce growth.

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<sup>3</sup> "Blueprint Then/Now/Next." *Sacramento Region Blueprint*. Sacramento Council of Governments, n.d. Web. 23 July 2010. <<http://www.sacregionblueprint.org>>.

Furthermore, SAFCA's reliance on development fees implies that growth in the Natomas Basin may be critical to funding future flood protection efforts. The DEIS explains (p. 2-81) that SAFCA will use development fees to fund activities that appear unrelated to development: waterside levee strengthening, landside levee strengthening, acquisition of agricultural easements (outside the basin), and improved system operations. The development impact fee applies to "all new structures placed anywhere in the 200-year (0.005 AEP) floodplain of SAFCA's capital assessment district." This implies the fee will be collected from many locations within SAFCA's jurisdiction. Yet, the vast majority of the remaining land to be developed appears within the 200-year floodplain appears to be located in the Natomas Basin, based on the SAFCA Boundary Map.

While the DEIS frequently notes the project is intended provide flood protection to current residents and property, the income generated from development fees appears to be a critical piece to ensuring adequate flood control protection remains in place. This further establishes growth inducement and future development as indirect impacts of the Natomas Levee Improvement Project.

The DEIS states that the City of Sacramento, Sacramento County, and Sutter County, which comprise three fifths of the organizations that comprise SAFCA, have developed general plans that provide a framework for growth and development within their jurisdictions. The DEIS does not state whether or not these plans are consistent with the blueprint. Several reports have documented that development fees are a significant revenue source for local governments<sup>4</sup>. The City and County of Sacramento have even developed a revenue sharing agreement for development in the Natomas Basin<sup>5</sup>. Like SAFCA, these entities are reliant on future development in the Natomas Basin to reduce future financial shortfalls.

EPA does not oppose development in the Natomas Basin, although we would advise against it in the deepest portions of the floodplain; however, we do think the FEIS should acknowledge that development is not incidental to the levee project, but an indirect and growth inducing impact of the project.

**Recommendation:**

The FEIS should describe all indirect and growth inducing impacts, including emissions of priority air pollutants and greenhouse gases from industrial, commercial, and residential development planned for the Natomas Basin.

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<sup>4</sup> For example, "Pay to Play, Residential Development Fees in California Cities and Counties, 1999." California Department of Housing and Community Development. Web. August 11, 2010. <[http://www.hcd.ca.gov/hpd/pay2play/fee\\_rpt.pdf](http://www.hcd.ca.gov/hpd/pay2play/fee_rpt.pdf)>

<sup>5</sup> "Resolution No. 2002-830, Adopted by the Sacramento City Council on the date of December 10, 2002." Web. August 11, 2010. <<http://www.msa2.saccounty.net/planning/Documents/Natomas%20Joint%20Vision/City-CountyMemorandumofUnderstanding.pdf>>

To mitigate air pollution and traffic congestion from new housing, the FEIS should commit to ensuring future development in the Natomas Basin will be consistent with the SACOG and Valley Vision blueprint.

The FEIS should acknowledge that development fees are a necessary source of revenue to ensure future flood protection within SAFCA's jurisdiction.