RECORD OF DECISION
408 PERMISSION AND DEPARTMENT OF THE ARMY 404 PERMIT TO
SACRAMENTO AREA FLOOD CONTROL AGENCY FOR THE NATOMAS LEVEE
IMPROVEMENT PROJECT
SACRAMENTO, CA

The Natomas Levee Improvement Program (NLIP), Phase 2 Project is a flood damage reduction project proposed for construction by the Sacramento Area Flood Control Authority (SAFCA) as presented by the State of California Central Valley Flood Protection Board (CVFPB). The Secretary of the Army has delegated approval authority to the Chief of Engineers for the U.S. Army Corps of Engineers (USACE or Corps) to issue permission to proceed with the proposed construction pursuant to 33 U.S.C. Section 408 (408 Permission) based on finding that the proposed alteration is not injurious to the public interest and will not impair the usefulness of the Sacramento River Flood Control Project. In accordance with 33 CFR Parts 320 to 332, the Corps is delegated authority to issue Department of Army permits (DA permits) for discharges of dredged or fill material into “waters of the United States”, including wetlands, pursuant to Section 404 of the Clean Water Act and for work or structures affecting navigable waters under Section 10 of the Rivers and Harbors Act.

I. Background

SAFCA proposes improvements to the Federal perimeter levee system of the Natomas Basin in Sutter and Sacramento Counties, California, and associated landscape and irrigation/drainage infrastructure modifications. These improvements would be implemented in three phases; Phase 2, initiated in 2008, Phase 3, initiated in 2009, and Phase 4, initiated in 2010. The project is proposed as early implementation of the anticipated outcome of the American River Common Features Project General Reevaluation Report.

The purpose of the proposed program and project is to provide at least 100-year flood protection to segments of the Federal levee system that do not currently meet that standard as quickly as possible. The remaining segments would be improved by the Corps to meet Federal and state standards for 200-year flood protection following authorization of the Common Features Project.

The Final Environmental Impact Statement (FEIS), dated November 2008, for the 33 U.S.C. Section 408 Permission to the CVFPB addressed flood damage reduction and habitat conservation in the Natomas Basin located in Reclamation District 1000 in Sacramento and Sutter Counties, California. The FEIS combined project-level analysis of the 2008 construction phase (i.e. Phase 2) of the NLIP and program-level analysis of the 2009 (i.e. Phase 3) and 2010 (i.e. Phase 4) construction phases. The proposed program and projects focus only on segments that do not currently meet the 100-year design criteria adopted by the Federal Emergency Management Agency (FEMA): approximately 18 miles along the Sacramento River east levee, approximately 5 miles along the Natomas Cross Canal (NCC) south levee, and more than 3 miles along the Pleasant Grove Creek Canal (PGCC) west levee. SAFCA proposes to modify these segments to meet the design criteria by the end of 2010. Phase 2 specifically focuses on improvements to address remaining seepage and levee height deficiencies along the entire 5.3-mile length of the NCC, as well as seepage, erosion, encroachment,
and levee height deficiencies along the upper 4.5 project miles of the Sacramento River and NCC east levee.

This Record of Decision (ROD) approves the project at a program level and the specific flood damage reduction features proposed for implementation in Phase 2 as defined below:

- NCC south levee improvements: Raise and realign the NCC south levee to provide additional levee height and more stable waterside and landside slopes. Construct a seepage cutoff wall through the levee crown in Reaches 3-7.

- Sacramento River east levee Reaches 1-4B: Construct an adjacent, raised levee from the NCC to reach 4B with a combination of cutoff walls, seepage berms, and relief wells for seepage remediation where required.

- Irrigation and drainage infrastructure improvements: Relocate the highline Elkhorn Main Irrigation Canal between the North Drainage Canal and Elkhorn Reservoir in reaches 4B – 6A.

- Construct a new canal designed to provide drainage and associated giant garter snake (GGS) habitat between the North Drainage Canal and Elkhorn Reservoir

- Remove a deep culvert at the location of Pumping Plant No. 2.

An application for a DA Permit was originally received in October 2007. An initial public notice describing the proposed project was issued in January 2008. A complete revised application for the DA permit was received in June 2008.

A letter requesting 408 permission was received in February 2008 from the CVFPB. The project requires permission to alter the existing federally authorized levee and construct a new adjacent setback levee that would become part of the federally authorized flood risk reduction project.

II. Alternatives Considered

In addition to “no action”, the following alternatives were considered:

1. **Alternative 1: (Preferred and Selected Alternative) Construct an Adjacent Setback Levee along the Sacramento River East Levee.** This alternative involves creating an adjacent setback levee along the east bank of the Sacramento River along Reaches 1, 2, 3, 4A and 4B. This alternative would involve relocating the Elkhorn Canal, raising and realigning the NCC south levee, and creating a new GGS Drainage Canal. Repairs and improvements would consist of constructing cutoff walls, seepage berms, and relief wells for seepage removal where required.

2. **Alternative 2: Raise in Place with a 1,000-Foot Levee Setback in the Northern 1.5 Miles along the Sacramento River East Levee.** This alternative would involve raising the landside slope of the east levee of the Sacramento River to provide additional levee height and more stability. A 1,000 foot setback levee would be constructed along Reaches 1 and 2. This alternative would involve relocating the Elkhorn Canal, raising and realigning the NCC south
levee, and creating a new GGS Drainage Canal. Repairs and improvements would consist of constructing cutoff walls, seepage berms, and relief wells for seepage removal where required.

3. Alternative 3: Construct an Adjacent Levee with a 500-Foot Levee Setback in the Northern 1.5 Miles along the Sacramento River East Levee. This alternative involves creating a 500 foot setback levee adjacent to the existing levee on the east bank of the Sacramento River along Reaches 1 and 2. This alternative would also involve relocating the Elkhorn Canal, raising and realigning the NCC south levee, and creating a new GGS Drainage Canal. Repairs and improvements would consist of constructing cutoff walls, seepage berms, and relief wells for seepage removal where required.

The environmentally preferred and Least Environmentally Damaging Practicable alternative is Alternative 1, construction of adjacent setback levee along Reaches 1-4A of the Sacramento River east levee and raising and installing cutoff walls on the NCC.

III. Responses to FEIS Comments

Two comment letters were received during the FEIS public comment period. These comments were from the United States Environmental Protection Agency (USEPA) and the Garden Highway Association. Their comments and USACE responses, in italics, to those comments are below.

**USEPA:**

- Requested continued coordination with the regulatory agencies. *The Corps along with SAFCA will continue to coordinate with the regulatory agencies throughout the project.*

- Requested that the Clean Water Act 404(b)(1) Alternative Analysis be included as an appendix. *This has been included as an appendix to the ROD.*

- Recommended implementation of the Natomas Basin flood safety plan. *The 408 permission has a provision that this must be provided within one year of issuance.*

- Recommended the ROD describe how future development would not constrain effective flood protection management nor compromise the flood benefits of this project. *The proposed program and Phase 2 project would substantially lessen the probability of an uncontrolled flood in the Natomas Basin due to levee failure. If no additional flood damage reduction measures are implemented, the result would be a steady rise in expected annual damages that would undermine the accomplishments of the program. As such, SAFCA is implementing a development impact fee program. Based on Sacramento Area Council of Governments growth projections, this fee program would generate approximately $400 million over the next 30 years. This revenue would be used to finance continued flood risk reduction actions for the Natomas Basin and the Lower American and Sacramento Rivers.*
Garden Highway Association:

- The Garden Highway Association submitted comments on the Draft Environmental Impact Statement (DEIS) and requested further studies be completed by the Corps. Since then, the Corps has completed engineering reviews of all technical analysis including the hydraulic analysis performed by SAFCA and included the results as an appendix to the 408 Permit.

- New comments submitted on the FEIS were related to the protection of fish, wildlife and flora. The Corps consulted with the appropriate resource agencies. The Corps has received a Biological Opinion (BO) and the United States Fish and Wildlife Service (USFWS) and National Marine Fishery Service (NMFS) have determined that the project will not result in significantly adverse impacts on listed species in the project area.

The Corps previously responded to the remaining comments submitted by the Garden Highway Association in the FEIS.

IV. Other Applicable Laws and Policies

1. National Environmental Policy Act (NEPA) of 1969, as Amended: The proposed action is considered a major Federal action. The Corps determined the proposed action had the potential to significantly affect the quality of the human environment. Scoping for the Environmental Impact Statement (EIS) began on December 17, 2007 when a notice was distributed to a large mailing list to announce a public scoping meeting. The public scoping meeting was held on January 9, 2008. A Notice of Intent to Prepare an EIS was published in the Federal Register on January 31, 2008. A town hall meeting was held on June 11, 2008 at the Natomas Community Center. Representatives from USACE, SAFCA and the FEMA were present to answer questions and provide information about the project to the 70 individuals in attendance. On June 13, 2008, the Corps issued a DEIS. On July 16, 2008, during the comment period, a public meeting was held in which written comments were received. The public comment period for the DEIS closed on 28 July 2008. Sixteen comment letters were received. The major areas of controversy associated with the comments were construction related effects on Garden Highway residents and concerns regarding the modeling used to analyze the project’s hydraulic impacts. These issues were the subject of a California Environmental Quality Act (CEQA) lawsuit brought against SAFCA by the Garden Highway Community Association which was settled on April 18, 2008. The Corps issued a FEIS in November 2008. A Notice of Availability was published in the Federal Register on November 14, 2008. Two comments were received on the FEIS.

2. Federal Clean Water Act (CWA) of 1972, as Amended: The proposed program and project work required Department of Army (DA) authorization under Section 404 of the CWA. The proposed project is in compliance with the Section 401 of the CWA. The Central Valley Regional Water Quality Board issued a water quality certification under Section 401 of the Clean Water Act for the proposed actions on January 16, 2009. The certification is included as a special condition of the DA permit and the Section 408 permission.

3. Rivers and Harbors Act of 1899, as Amended: The proposed action would require permission under Section 10 (33 USC 403) for the reconstruction of Pump Station No. 2 because drainage and outfall pipes will be extended into the Sacramento River, a navigable
waterway. The proposed action is also subject to Section 408 (33 USC 408) permission. The FEIS will be used to support the Section 10 and 408 decisions for the proposed actions.

4. Fish and Wildlife Coordination Act (FWCA) of 1934, as Amended: The USFWS, NMFS, and the California Department of Fish and Game (CDFG) have provided coordinated input on the project. Consultation with CDFG is ongoing. Appropriate coordination with USFWS will continue throughout the program. The USFWS Coordination Act Report was completed on October 15, 2008. The proposed action is in full compliance with the FWCA.

Endangered Species Act Section 7 consultation with NMFS and USFWS has been completed.

5. Endangered Species Act (ESA) of 1973, as Amended: Following formal consultation under Section 7 of the ESA for the proposed actions, USFWS issued a BO on October 9, 2008 for the valley elderberry longhorn beetle (VELB) and GGS. The BO is incorporated into the DA permit and the Section 408 permission as a special condition. The Corps also consulted with NMFS. On January 14, 2009, NMFS concurred that the proposed action was not likely to adversely affect Central Valley steelhead, Sacramento River winter-run Chinook salmon, Central Valley spring-run Chinook salmon, their critical habitat and Southern Distinct Population Segment of North American green sturgeon.

6. Magnuson-Stevens Fishery Conservation and Management Act (MSA) of 1976 as Amended: In a letter dated January 14, 2009, NMFS determined the proposed action would not adversely affect Essential Fish Habitat for Pacific salmon and had no additional conservation recommendations. The proposed action is in compliance with the MSA.

7. Migratory Bird Treaty Act (MBTA) of 1918: Compliance with the MTBA is being addressed through compliance with the ESA, FWCA, and California Endangered Species Act (CESA). Prior to construction, SAFCA will obtain authorization for take under Section 2081 of the CESA and will comply with the terms of the permit issued for that purpose.

8. Clean Air Act (CAA) of 1963, as Amended: The proposed permit has been analyzed for conformity applicability pursuant to regulations implementing Section 176(c) of the CAA. Based on the modeling conducted, it is foreseeable that unmitigated construction generated emissions would result in or substantially conflict with applicable air quality planning efforts. However, with implementation of mitigation identified in the FEIS, emissions would be reduced below the USEPA’s general conformity de minimis thresholds. Any later indirect emissions are generally not within the Corps continuous program responsibility and generally cannot be practically controlled by the Corps. For these reasons, a conformity determination is not required for this permit action.

9. National Historic Preservation Act of 1966, as Amended: This project is in compliance with Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended. USACE has initiated Section 106 consultation with the State Historic Preservation Officer (SHPO). All evaluations of resource identification, determinations of significance, and determinations of project effects and mitigation/treatment measures will meet the requirements of 36 CFR 800 (procedures for implementing Section 106) through a Programmatic Agreement (PA) between USACE, the SHPO, and SAFCA.
10. **Executive Order (EO) 11988: Floodplain Management:** There are no practicable alternatives to the proposed program and project which would avoid adverse effects and incompatible development in the floodplain. The proposed program will reduce flood risk and provide habitat values.

11. **Executive Order 11990: Protection of Wetlands:** No proposed action includes all practicable measures to minimize harm and loss to wetlands. Based on the FEIS and proposed compensatory mitigation for project impacts, the proposed action complies with the EO.

12. **Executive Order 13175: Consultation with Indian Tribes, Alaska Natives, and Native Hawaiians:** The proposed action does not implement any regulations, legislation, policies, or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Native American participation has been incorporated the terms of the Programmatic Agreement entered into under Section 106 of the NHPA and executed on May 8, 2008.

13. **Farmland Protection Policy Act (FPPA) (7 USC 4201 et seq.):** The proposed action requires converting areas of farmland to flood control facilities, but includes mitigation to acquire agricultural easements at a 1:1 ratio for farmlands removed from agricultural use. The project complies with the FPPA because it provides for compensation for unavoidable direct conversion of agricultural land to non-agricultural uses, will provide infrastructure that will support the continuation of agricultural resources on the west side of the Natomas Basin, and is consistent with state and regional planning efforts that will protect farmland on a regional scale from development.

**V. Consideration of Mitigation Measures**

Although all practicable means to avoid, minimize, and mitigate adverse effects on environmental resources have been incorporated into the proposed program and project, the preferred alternative would have several unavoidable, significant effects.

The volume of borrow material and associated haul traffic, required for project implementation would result in unavoidable, significant, and temporary increases in traffic on local roadways. Creation and implementation of a traffic routing plan will greatly reduce the increased traffic levels, but it is anticipated that traffic during some periods will still exceed acceptable thresholds. During some time periods, temporary short-term noise and vibrations affecting residents along Garden Highway would also be significant and unavoidable.

Due to the large volume of the haul truck traffic and the operation of a wide range of construction equipment, temporary emissions of ROG, NOx, and PM10 during construction would result in significant and unavoidable air quality impacts. Implementation of mitigation measures will greatly reduce project generated construction emissions but will not reduce all emissions to below air quality management district standards. To compensate for any emission above these standards, SAFCA has agreed to provide payment into the applicable air quality mitigation fee program.

The expansive footprint of the project would result in the conversion of a significant amount of important farmland to non-agricultural use. Mitigation intended to reduce project effects on
farmland has been included in the mitigation and monitoring program adopted by SAFCA. Mitigation includes the acquisition of agricultural conversion easements at a 1:1 ratio, with the lands on which the permanent easements are acquired are maintained for agricultural use.

Through coordination with the USFWS, the project includes mitigation for impacts to the VELB, the GGS, and their habitats. Proposed compensatory mitigation for project impacts on VELB habitat includes planting of vegetation and protection of habitat that would support the species. Proposed compensatory mitigation for project impacts to GGS includes creation of marsh habitat and the protection of agricultural areas to serve as habitat for GGS. The complete details of the compensation for giant garter snake and VELB are included in the BO from the USFWS dated October 9, 2008.

A Mitigation and Monitoring Plan (MMP) has been prepared and a Long-Term Management Plan (LTMP) is being prepared to guide SAFCA and its partners as they manage the compensatory land in perpetuity. The MMP and LTMP would establish specific success criteria for the habitat components, specify remedial measures to be undertaken is success criteria are not met, and describe short- and long-term management and maintenance of the habitat lands. Monitoring of the mitigation site(s) will occur for at least 8 years.

Through coordination with NMFS, the project includes designs to compensate for the loss of riparian vegetation and other impacts, permanent or temporary, to vegetation on the water side of the Sacramento River East levee slope. Permanent impacts will be compensated through revegetation with native species at a 1:1 ratio, in-kind where feasible. A slurry spill contingency plan will be developed and included in the Stormwater Pollution and Prevention Plan (SWPPP) prepared prior to construction by the construction contractor. This SWPPP will include plans to notify NMFS in case of a spill and measures to ensure any spill would be handled properly according to standard protocols.

Coordination with the SHPO in accordance with Section 106 of the NHPA, has led to the determination that at least one potentially, significant cultural resources site could be affected by project activities. This has led to the development of a Programmatic Agreement that stipulates that Historic Property Treatment Plans (HPTP) shall be prepared to mitigate adverse effects to historic properties. The HPTP contains mitigation measures for potential effects on cultural resources that are consistent with those proposed in the FEIS.

The Record of Decision (ROD) complete the National Environmental Policy Act process. The ROD will be publicly available upon request, or can be found on the Sacramento District and SAFCA websites. No action was taken prior to the 30-day review period after posting of the FEIS on November 14, 2008.

VI. 408 Permission

Special Conditions for 408 Permission

In order to assure that the proposed project does not impair the usefulness of the existing Federal project and that it not be injurious to the public interest, the following conditions will be imposed and are as follows:

1. This Section 408 approval does not authorize the take of any threatened or endangered species or designated critical habitat. In order to legally take a listed species, there
must be a separate authorization under an ESA Section 10 permit, or a BO under ESA Section 7, with incidental take provisions with which you must comply. The USFWS BO Number 81420-2008-F-0195-5 dated October 9, 2008 contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with incidental take that is also specified in the BO. Section 408 approval is conditional upon compliance with all of the mandatory terms and conditions associated with the BO, which terms and conditions are incorporated herein by reference. Failure to comply with the terms and conditions associated with the incidental take statement in the BO, where a take of the listed species occurs, would constitute an unauthorized take, and it would also constitute non-compliance with the Corps’ approval to proceed. The USFWS is the appropriate authority to determine compliance with the terms and conditions of its BO and with the ESA. The CVFPB must comply with all conditions of this BO, including those ascribed to the Corps. The NMFS letter, number 2008/05035, dated January 14, 2009, stated that the NLIP Phase 2 project is not likely to adversely affect Central Valley steelhead, Central Valley spring-run Chinook salmon, or North American green sturgeon or their designated critical habitat or the Essential Fish Habitat of Pacific salmon.

2. You are required to submit a revision to the Reclamation District (RD) 1000 Operation and Maintenance (O&M) (33 CFR Section 208.10) Manual for review and approval by the U.S. Army Corps of Engineers, Sacramento District within 180 days of construction completion. As-Built drawings and permanent maintenance easement boundaries shall be submitted in conjunction with the draft O&M manual. Upon receipt of the draft O&M manual, this office will schedule a transfer inspection with you to verify all construction has been completed in accordance with the permission. Any features found to be deficient during that inspection will require your correction prior to the Corps accepting the alterations as part of the Federal project. Construction data is required to be provided to this office for review by our Engineering Division during construction. Within 180 days of construction completion, you must furnish a certification report that the work has been completed in accordance with the conditions of this permit.

3. There shall be no disposal, including temporary disposal, of any material in any wetlands or other waters of the United States (US). Best management practices, such as silt fences and mulching, shall be employed to ensure exposed soils do not erode and wash into any waters of the US. Erosion control matting shall not be used to avoid entangling giant garter snakes in it.

4. To ensure your project complies with Section 106 of the NHPA, you must comply, prior to construction, with all terms of the PA between the USACE, SAFCA and the SHPO signed on May 1, 2008.

5. To ensure there is mitigation for residual flood risk, CVFPB is required to develop a Floodplain Management Plan that includes proactive elements for flood information dissemination, public awareness notification and training, flood warning and evacuation plans, emergency flood operations plan with annual exercise, dedicated evacuation resources and post-flood recovery plans. This plan shall be submitted within one-year of the issuance of the Section 408 letter of permission. You are required to participate in and comply with applicable Federal floodplain management and flood insurance programs.

VII. Section 408 Findings

408 Permission

Based on my review of the 33 U.S.C. 408 recommendation package, the FEIS, the views of other Federal, State, and local agencies, and input from the public, I find the recommended Natomas Levee Improvement Program Phase 2 project in the document to be technically adequate and not an impairment to the usefulness of existing Federal project; to be in accordance with environmental statutes; to be without significant adverse hydraulic impacts; and to not be injurious to the public interest. Therefore, the request under 33 U.S.C. Section 408, made by the State of California CVFPB on behalf of SAFCA to alter the Sacramento River Flood Control Project by construction of the Natomas Levee Improvement Program Phase 2 Project, is approved.

21 JAN 09
Date

Steven L Stockton
Director of Civil Works
VIII. DA Clean Water Act Section 404 Permit

Compliance with 404(b)(1) Guidelines

1. Are there available, practicable alternatives having less adverse impact on the aquatic ecosystem and without other significant adverse environmental consequences that do not involve discharges into “waters of the U.S.” or at other locations within these waters?
   Yes ___ No X

2. If the project is in a special aquatic site and is not water dependent, has the applicant clearly demonstrated that there are no practicable alternative sites available?
   Yes X ___ No ___

3. Will the discharge:

   Violate state water quality standards?
   Yes ___ No X

   Violate toxic effluent standards under Section 307 of the Clean Water Act?
   Yes ___ No X

   Jeopardize endangered or threatened species or their critical habitat?
   Yes ___ No X

   Violate standards set by the Department of Commerce to protect marine sanctuaries?
   Yes ___ No X

4. Evaluation of the information in EIS indicates that the proposed discharge material meets testing exclusion criteria for the following reason(s):

   (X) based on the available information, the material is not a carrier of contaminants.

   ( ) the levels of contaminants are substantially similar at the extraction and disposal sites and the discharge is not likely to result in degradation of the disposal site and pollutants will not be transported to less contaminated areas.

   ( ) acceptable constraints are available and will be implemented to reduce contamination to acceptable levels within the disposal site and prevent contaminants from being transported beyond the boundaries of the disposal site.

5. Will the discharge contribute to significant degradation of “waters of the U.S.” through adverse impacts to:

   Human health or welfare, through pollution of municipal water supplies, fish, shellfish, wildlife and/or special aquatic sites?
   Yes ___ No X

   Life stages of aquatic life and/or wildlife?
   Yes ___ No X

   Diversity, productivity, and stability of the aquatic life and other wildlife? Or wildlife habitat or loss of the capacity of wetlands to assimilate nutrients, purify water or reduce wave energy?
   Yes ___ No X

   Recreational, aesthetic and economic values?
   Yes ___ No X
f. Will all appropriate and practicable steps be taken to minimize adverse impacts of the
discharge on the aquatic ecosystem? Does the proposal include satisfactory compensatory
mitigation for losses of aquatic resources?

Yes ____ No ____

**Public Interest Review**

The decision whether to issue a permit is based on an evaluation of the probable impacts,
including cumulative impacts, of the proposed activity and its intended use on the public
interest. Evaluating the probable impact which the proposed activity may have on the public
interest requires a careful weighing of all those factors which become relevant in each particular
case. The benefits which reasonably may be expected to accrue from the proposal must be
balanced against its reasonably foreseeable detriments. If the proposed activity complies with
the USEPA's 404(b)(1) guidelines, a permit will be granted unless the District Engineer
determines that it would be contrary to the public interest.

The EIS analyzed a number of factors relevant to the public interest review. These factors
include but are not limited to socioeconomics, aesthetics, wetlands, historic properties, fish and
wildlife, flooding and floodplain values, land use, mineral needs, water quality, energy needs,
safety, and Prime and unique farmland.

1. The relative extent of the public and private need for the proposed work has been
considered: The proposed action is needed to provide flood protection for the Natomas Basin,
including existing residents and public facilities. The project will also allow private interests to
continue to construct residential and commercial developments in the area.

2. The practicability of using reasonable alternative locations and/or methods to
accomplish the objective of the proposed structure or work has been evaluated. Several
reasonable alternatives have been reviewed as part of the permit process, including practicable
alternatives in the EIS. With mitigation, the proposed action is the least environmentally
damageable, practicable alternative.

3. The extent and permanence of the beneficial and/or detrimental effects that the
proposed structures or work may have on the public and private uses for which the area is
suited has been reviewed: The areas to be impacted are primarily used for private agricultural
purposes. The proposed action will result in a permanent change in use in areas where the
levee will be widened, in the adjacent levee alignment, and in certain borrow areas. However,
some borrow areas will be returned to agricultural use. Moreover, the proposed action is
planned to protect existing and future uses in the Basin from potentially catastrophic flooding
which could cause significant adverse impacts to natural and man-made resources.

**Special Conditions for the DA Permit**

1. The document entitled Mitigation and Monitoring Plan, Natomas Levee Improvement
Program, Landslide Improvement Project dated December 2008, is incorporated by reference as
a condition of this authorization except as modified by the following special conditions.

2. In no case shall initiation of the construction of compensatory mitigation, specifically,
the GGS canal and Brookfield rice field restoration be delayed beyond September 30, 2009.
Construction of compensatory mitigation must be completed no later than September 30, 2010.
3. To ensure that mitigation is completed as required, you must notify the District Engineer of the start date and the completion date of the mitigation areas' construction, in writing and no later than ten calendar days after each date.

4. To provide a permanent record of the completed mitigation work, you shall provide two complete sets of as-builts of the completed mitigation areas (i.e., GGS canal and Brookfield rice field restoration) to the Corps of Engineers. The as-builts must indicate changes made from the original plans in indelible red ink. These as-builts must be provided to this office no later than 60 days after the completion of construction of each of the mitigation areas.

5. To protect the integrity of the preserved areas and avoid unanticipated future impacts, no roads, utility lines, trails, benches, equipment or fuel storage, grading, firebreaks, mowing, grazing, pesticide use, burning, or other structures or activities shall be constructed or occur within the preservation areas without specific, advance written approval from the Corps of Engineers.

6. The Corps permit does not authorize you to take an endangered species, in particular GGS, VELB, or designated critical habitat. In order to legally take a listed species, you must have separate authorization under the ESA (e.g., an ESA Section 10 permit, or a BO under ESA Section 7, with "incidental take" provisions with which you must comply). The USFWS BO (Number 81420-2008-F-0195-5, October 9 2008), contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with "incidental take" that is also specified in the BO. Your authorization under this Corps permit is conditional upon your compliance with all of the mandatory terms and conditions associated with "incidental take" of the attached BO, which terms and conditions are incorporated by reference in this permit. Failure to comply with the terms and conditions associated with incidental take of the BO, where a take of the listed species occurs, would constitute an unauthorized take, and it would also constitute non-compliance with your Corps permit. The USFWS is the appropriate authority to determine compliance with the terms and conditions of its BO, and with the ESA. The CVFPB and SAFCA must comply with all conditions of this BO, including those ascribed to the Corps.

7. To further ensure your project complies with the ESA, you must implement all of the mitigating measures identified in the enclosed NMFS letter of concurrence from January 14, 2009 including those ascribed to the Corps therein. If you are unable to implement any of these measures, you must immediately notify this office and the NMFS so we may consult as appropriate, prior to initiating the work, in accordance with Federal law.

8. To ensure your project complies with Section 106 of the NHPA, the CVFPB and SAFCA must comply with all terms of the PA between the USACE, SAFCA, and the SHPO signed on May 1, 2008, and is incorporated by reference as a special condition of the permit.

9. Prior to initiating any activity authorized by this permit, you shall, to insure long-term viability of the GGS canal and Brookfield rice field restoration mitigation areas:
   
   a. Establish a fully-funded endowment(s) to provide for maintenance and monitoring of these areas.
   
   b. Designate an appropriate conservation-oriented third party entity to function as preserve manager and to hold the conservation easements.
c. Record permanent conservation easements and deed restrictions maintaining both areas as wetland preserve and wildlife habitat in perpetuity. Copies of the proposed deed restriction language must be provided to the Corps of Engineers for approval prior to recordation.

10. Provide copies of the recorded documents to the Corps of Engineers no later than 30 days prior to the start of construction of any of the activities authorized by this permit.

11. To ensure completion of compensatory mitigation construction, you must post a performance bond or irrevocable standby letter of credit (Performance Security) for the amount of the construction with a federally approved surety. This Performance Security shall not be released until the Corps of Engineers has received the as-built drawings and approved them in writing. A draft letter for the Performance Security must be submitted to this office for review and approval.

12. You must allow representatives from the Corps to inspect the authorized activity and any mitigation, preservation, or avoidance areas at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

13. You must submit monitoring reports to this office for each year of the eight-year monitoring period, and for each additional year, if remediation is required, by December 31st of each year.

14. All terms and conditions of the Section 401 Water Quality Certification dated January 16, 2009, are expressly incorporated as conditions of this permit.

15. Your responsibility to complete the required compensatory mitigation as set forth in this permit will not be considered fulfilled until you have demonstrated mitigation success and have received written verification from the U.S. Army Corps of Engineers.

IX. DA Clean Water Act Section 404 Permit

1. The evaluation of the proposed action and alternatives was done in accordance with all applicable laws, executive orders, regulations, and agency regulations. The EIS and supporting documents are adequate and contain sufficient information to make a reasoned permit decision.

2. The selected alternative is the applicant's Proposed Action, and with appropriate and practicable mitigation measures to minimize environmental harm and potential adverse impacts of the discharges on the aquatic ecosystem and the human environment. The applicant’s proposed project, as mitigated by these conditions, is considered the least environmentally damaging, practicable alternative.

3. The discharge complies with the Section 404(b)(1) guidelines, with the inclusion of appropriate and practicable general and special conditions in the permit to minimize pollution or adverse effects to the affected ecosystem.

4. Issuance of a Department of the Army permit, with the inclusion of special conditions on the permit, as prescribed by regulations published in 33 CFR Parts 320 to 332, and 40 CFR Part 320 is not contrary to the public interest.
I have reviewed and evaluated, in light of the overall public interest, the documents and factors concerning the permit application for the proposed action, as well as the stated views of interested agencies and the public. In doing so, I have considered the possible consequences of the proposed action in accordance with regulations published in 33 Code of Federal Regulations (CFR) Parts 320 through 332 and 40 CFR Part 230. Based on these considerations, and pursuant to my delegated authority under Section 404 of the Clean Water Act, I am issuing a DA permit to SAFCA to construct the NLIP Phase 2 subject to special conditions.

__________________________          __________________________
Date                                 Thomas C. Chapman, P.E.
                                      Colonel, U.S. Army
                                      Commanding