

**Jackson Hole Flood Protection Project Operations and Maintenance  
Supplemental Environmental Assessment  
Number 1**

**Comments Received and Responses to Comments**

This report presents the comments received by the Walla Walla District Corps of Engineers (Corps) on its Jackson Hole Flood Protection Project Operations and Maintenance draft Finding of No Significant Impact (FONSI) and Supplemental Environmental Assessment (SEA), and the Corps responses to those comments. The Corps distributed the draft FONSI and EA for a 30-day public review. The Corps received a total of three e-mail messages and letters commenting on the proposed updates to the Corps operation and maintenance (O&M) program. Most of the comments expressed concern about effects on natural resources, particularly nesting bald eagles. The Corps made a few minor revisions to the SEA in response to the comments.

**1. Comment e-mail from National Park Service (NPS), Grand Teton National Park (GTNP)**

**Comment NPS1:** The buffer zones around occupied bird nests as described in several locations in the SEA and the appendices are too small. The park operates with larger buffers around occupied passerine/raptor/eagle nests – 25 yards for nesting passerines, 0.25 mile for raptors, and 0.5 mile for bald eagles. National Bald Eagle Management Guidelines (Guidelines) specifically state to consult regional authorities on regionally appropriate buffer sizes. The buffer zones of 330 feet and 660 feet are well below the buffer zone that the park follows.

**Response:** The Corps recognizes and understands the concern with buffer zones for passerine/raptor/eagle nests on the levees. Larger distances have been requested by different agencies including the NPS for buffer zones from avian nests than the Corps has presented in the SEA. These larger distances appear to have the goal of encompassing all possible durations and intensities of work that may be performed near nests. The Corps O&M activities consist of low intensity and/or low duration work. The buffer zones employed by the Corps are sufficient given the decreased effect caused by the low intensity and low duration of the work near the nests.

When working around eagle nests, the Corps adheres to the 2007 Guidelines developed and published by the U.S. Fish and Wildlife Service (USFWS) for buffer zones. The Corps experience in the extensive areas it manages along the Snake River, including Jackson Hole, has reinforced that the scientifically developed Guidelines 330 feet non line of sight and 660 feet line of sight buffer zones are accurate and effective.

The Corps has record of only one eagle nest in GTNP associated with the levees. That nest is over a mile from the nearest levee in the Park. It is over a half mile from the

nearest levee located outside the GTNP. Given that the distance from the nest to the levees far exceeds the recommended 660 feet, as well as the NPS guidelines, the Corps does not believe that the eagle nest will be impacted by levee maintenance activities within the GTNP.

Of significant importance is that birds in the Jackson Hole area range over a wide distance. While there is relatively more human activity in some areas than others, birds regularly encounter human activity that is higher in intensity and duration than Corps maintenance activities on the levees.

The Corps was not able to find the specific statement in the Guidelines requiring individuals to consult regional authorities on regionally appropriate buffer sizes, as stated in the NPS response. The Guidelines recommend consultation to ensure compliance with regional laws with the USFWS and state wildlife agencies. It recommends contacting the USFWS field office for nesting chronology in the area. Neither of these recommendations raise to the level of requiring consultation on buffers.

**Comment NPS2:** The Affected Environment sections of the SEA did not include several prominent wildlife species found in the Jackson Hole area, including grizzly bear, black bear, and great gray owls. There was also a wolverine sighting north of the project area in 2017.

**Response:** The SEA has been revised to include these species. This did not result in any change in the effects of the alternatives or the selection of the preferred alternative.

The effects of the O&M activities on grizzly bear and great gray owl was also addressed in the 1990 Jackson Hole, Wyoming Flood Protection Project O&M Decision Document and Environmental Impact Statement (1990 Decision Document/EIS).

**Comment NPS3:** In Appendix A, add a measure to report sightings of any Endangered Species Act-listed species or large carnivores within GTNP to park biologists.

**Response:** The Corps has updated Appendix A to include this reporting.

**Comment NPS4:** The impact avoidance measures and Best Management Practices (BMPs) in Appendix A need to be expanded to include additional measures for food and trash management practices to reduce human-bear conflicts within the project area. Measures/BMPs to add include:

- Ensure all bear attractants are attended at all times.
- Store unattended attractants in a building, a bear resistant food storage locker or canister, a hard-sided vehicle with doors locked and windows closed; or disposed of in a bear-resistant garbage container.

- Do not leave backpacks or daypacks containing unsecured attractants unattended.
- Provide for proper storage and disposal of materials that may be toxic to bears, including petroleum products.

**Response:** The Corps has updated Appendix A to include a measure regarding precautions to reduce conflicts with bears. BMPs in Section 2.6 Water Quality, address containment and storage of petroleum products for work on the levees. These requirements simultaneously meet the petroleum storage requirements for bears.

**Comment NPS5:** In Appendix A, add a measure to report all human-bear conflicts within the NPS to Teton Interagency Dispatch Center immediately, and report all bear sightings to the GTNP Bear Management Office within 24 hours.

**Response:** The Corps has updated Appendix A to include reporting bear conflicts and bear sightings.

**Comment NPS6:** In Appendix A, add the following additional measures/BMPs to minimize the introduction of invasive weeds:

- All vehicles and equipment shall arrive at the job site in a condition free of mud, dirt, and plant material. Pressure washing prior to transport can be used to comply with this requirement. Prior to off-loading any equipment, inspection and verbal approval must be obtained from the GTNP or a delegated representative.
- All imported material (sand, gravel, rock, etc.) must be obtained from a NPS or county weed district approved source.
- Material sources that are not from a county or NPS approved weed-free material source must be precooked (300 degrees), or washed to prevent spreading weeds.

In lieu of these BMPs for materials, work with the NPS to develop and implement an acceptable multi-year post-treatment plan for invasive weeds.

**Response:** The Corps has added Section 1.6 Invasive/Noxious Weed Management to Appendix A to include provisions for weed control.

One of the reasons the Corps prepared the SEA was to update the maintenance measures that govern vegetation control, including weeds, on the levees. The Corps is fully committed, and bound by internal requirements and Executive Orders 13112 and 11987, to implement exotic and invasive weed control as part of the levee management program. To ensure the minimization of weed transport the Corps has developed and implemented effective and progressive weed control measures. This program includes spraying weeds on the levees as long as funding is available, as well as including specific requirements in Corps contracts such as:

- 1) supplying weed free fill compliant with standards set by the Wyoming Weed and Pest Council for weed free gravel;
- 2) requiring the contractor to provide documentation from the vendor that their facility is weed free;
- 3) requiring fill to be free of wood, roots, clay organic matter, refuse or other materials;
- 4) requiring rock to be free of attached soil;
- 5) requiring the contractor to thoroughly wash all excavation equipment prior to bringing it on-site;
- 6) requiring the contractor to perform inspections of trucks prior to entering the Park to locate and remove soil.

These weed control measures have proven effective in weed management and eradication. Given the effectiveness of these measures, the Corps will continue to implement them for work on the levees found within the Park, as authorized by the existing easement, and outlined in the SEA.

The Corps welcomes the opportunity to work with NPS personnel regarding weed infestations on the levees. If weed problems are encountered on the levees, the Corps would welcome the NPS's documented assessments of presence, changes, and causes, regarding weed infestations on the levees so the Corps can assess its weed management procedures and adjust if necessary.

## **2. Comment e-mail from Teton Conservation District**

**Comment TCD1:** Neither Teton Conservation District (TCD) nor Teton County were provided notification of this NEPA process nor the public comment period. This did not provide the proper opportunity for TCD or the county to apply to the Corps for Cooperating Agency status for this project.

**Response:** The Corps used several avenues for notifying the public and agencies, including TCD and Teton County, that the Corps was preparing an SEA for updating the Jackson Hole Flood Protection Project O&M. In April 2017, the Corps distributed a scoping letter inviting public and agency input on issues and environmental effects to be considered. The letter was sent to many Federal, state, and local agencies, including several staff members of Teton County and the Teton County Commissioners. The Corps also issued a news release inviting scoping comments and posted information about the SEA on the Corps' website. On March 9, 2018, the Corps distributed another e-mail notification to an expanded list of agencies, including Teton County staff and county commissioners, as well as TCD, notifying them of the availability of the SEA for public review.

The Council on Environmental Quality regulations (CEQ Regulations) for implementing the National Environmental Policy Act (NEPA), address cooperating agencies in 40 CFR Sections 1501.6 and 1508.5. The CEQ Regulations allow a lead Federal agency to invite a state or local agency with special expertise with respect to any environmental

issue which should be addressed in the NEPA document, to be a co-operating agency. However, the proposed action is for continued O&M of the existing flood protection project, not construction of a new project or modification of an existing project. The Corps did not identify any environmental issues associated with the O&M that would require the special expertise of other Federal, state, or local agencies. The Corps determined a cooperating agency was not needed for updating the Jackson Hole Flood Protection Project O&M, however TCD's interest is noted for future associated projects.

**Comment TCD2:** The SEA does not address either TCD's Long-Range Land Management Plan document (2016-2021) or that of Teton County, Wyoming as required under NEPA. Such cooperation is important for sustaining the local tax base plus public health and safety.

**Response:** The Corps is updating its existing program for O&M of the levee system. It is not proposing to construct a new project or to make changes to the levee system that has been in place since the 1960's. The SEA meets the requirements of NEPA.

The levee system already contributes to sustaining the local tax base and public health and safety. It does this by providing flood risk reduction for many property owners in the Jackson Hole area and by protecting roads and several bridges including the State Highway 22 Bridge (Wilson Bridge), the U.S. Highway 26 Bridge, and the Cattleman's Bridge.

**Comment TDCD3:** Both TCD and the Teton County Comprehensive Plan prioritize the health of the Snake River fine spotted cutthroat trout fishery as an important component of our local economy, yet the SEA does not assess the potential impacts to the species or habitat.

**Response:** The 1990 O&M Decision Document/EIS addressed fine-spotted cutthroat trout in detail, including effects of O&M activities on the trout. Because the Corps determined this information is still applicable, the Corps did not repeat it in the SEA. When preparing the SEA, the Corps coordinated with Wyoming Game and Fish Department concerning levee effects to Snake River cutthroat trout in the main stem of the Snake River and confirmed the levees do not have significant effects on the cutthroat trout.

**Comment TCD4:** Teton County has recognized that sustaining the habitats of up to 17 focal species is vital to achieving the goals of the Teton County Comprehensive Plan (2012). They are critical for sustaining the tax base of Teton County. The environmental outcomes for virtually none of those species are addressed in the SEA.

**Response:** The 2012 comprehensive plan states that focal species are being identified, but does not appear to provide a list of species that have been identified as

such. The plan does list the habitat of six species as being defined and protected by the county – elk, moose, mule deer, bald eagle, trumpeter swan, and cutthroat trout. The effects of the Corps O&M of the levee system on these species and additional species were already addressed in the 1990 O&M Decision Document/EIS. The SEA summarized the information from the 1990 O&M Decision Document/EIS and provided additional material as needed. The effects of the updated O&M activities are essentially the same as those identified in the 1990 O&M Decision Document/EIS. The Corps determined none of the effects to fish or wildlife species from the updated O&M activities would be significant, therefore the updated O&M activities could be considered to be consistent with county's comprehensive plan, or at least not in conflict with the plan.

The SEA addresses the effects of the ongoing O&M program for the existing levee system. The Corps is not proposing to change the system or modify the levees. The Corps has incorporated timing, methodology, and strategies to continue to maintain the flood risk reduction provided by the levee system while minimizing the environmental effects of the O&M actions. For example, the Corps coordinates with Wyoming Game and Fish Department (WGFD) to identify active bald eagle nests each year. The Corps then maintains a buffer zone around those nests while performing necessary O&M activities.

The Corps has also coordinated with WGFD concerning levee effects to Snake River cutthroat trout in the main stem of the Snake River. Effects from the levees are not significant in the main stem of the Snake River. However access to off main stem spawning areas is important.

The Corps has determined the updated O&M actions would have no significant effect on the natural or physical environment.

**Comment TCD5:** Regardless of the Corps' internal alternative criteria, Alternative 3 appears to have the best potential to appropriately address local land use plans under NEPA.

**Response:** The Corps does not have the authority to implement Alternative 3, which included reconfiguring, modifying, or relocating the existing levees or adding levees. These changes to the levee system would change the level of flood risk reduction and would involve expansion of the levee system or construction of new levees, none of which are permissible in the legislation directing the Corps to assume O&M responsibilities (Water Resources Development Act of 1986), the 1990 Record of Decision for the 1990 O&M Decision Document/EIS, and the 1990 Local Cooperation Agreement (LCA) between the Corps and Teton County. This alternative would therefore require new legislative authority, and as a result did not meet the screening criteria of being consistent with the existing governing documents, therefore the Corps did not evaluate the alternative further.

Alternative 3 is outside the scope of this SEA. The SEA evaluated alternatives for continuing to O&M the existing flood protection project. The SEA did not evaluate alternative ways to provide flood risk reduction or modify the level of flood risk reduction for the Jackson Hole area. Alternative 3 involved modifying the levee system, not continuing to operate and maintain the existing system.

### **3. Comment letter from Wyoming Game and Fish Department**

**Comment WGF1:** The SEA states that the Corps will use a non-disturbance zone of 330 or 660 feet within the nesting season of February 1- August 15 as “machinery and equipment required for this project is not at the intensity nor duration to require additional impact assessment beyond the USFWS recommendations”. However, no additional discussion is provided on the intensity or duration of specific management activities. If these guidelines are applied as stated, especially early in the nesting season when eagles are most vulnerable to disturbance, it is likely that take will occur at some nest sites. To avoid this, we recommend that routine maintenance activities and vegetation management within 660 feet of occupied nest be scheduled after July whenever possible. Activities planned before that date should be cleared with the USFWS. Exceptions to this would include all emergency flood situations or other dike management activities related to human health and safety.

**Response:** The intensity was assessed by comparing the proposed activities listed in the SEA, such as vegetation spraying (agriculture), and alteration of shorelines, against the defined activities on page 12 of the 2007 Guidelines. A direct listing or a comparable equivalent of the maintenance activities was identified within the guidelines. The maintenance activities fell within Category A, or the least intense of the defined work with the shortest required buffer distances.

Except for during emergencies, maintenance work occurs after sensitive eagle disturbance time frames. The nature of routine levee maintenance work constrains the opportunity for the Corps to work on the levees until well after high runoff flows have ended, which except during emergencies, is after the sensitive timeframes of courting, breeding, incubation, and nestling periods for bald eagles. The Corps’ work schedule should meet the intent of avoiding work within 660 feet, or even greater, of an active eagle nest before and through the sensitive nestling period, given that annual work is not scheduled to commence until after the nestling period has passed.

**Comment WGF2:** We encourage the Corps to adopt Alternative 4 rather than Alternative 2 to avoid any unnecessary removal of bald eagle nest trees that could occur within the 15’ vegetation removal zone required under Alternative 2.

**Response:** Under Alternative 2 the Corps must be in compliance with Engineering Technical Letter (ETL) 1110-2-583. Because requesting and obtaining a variance from the vegetation removal requirement is allowed under the ETL, the Corps can also

request such a variance under Alternative 2. If approved the result would allow for the implementation of Alternative 4 – some of the woody vegetation could remain where the levee configuration and the vegetation growth characteristics meet the necessary conditions.

In 2018 there was only one eagle nest located within the 15 foot clear zone for the levees. If possible, the Corps would consider leaving the one tree. If the tree needs to be removed, the Corps would do this after the nesting season with any appropriate permitting under the Bald and Golden Eagle Protection Act.

**Comment WGF3:** We encourage the Corps to work with regional partners to improve wherever possible riparian, wetland habitat especially cottonwood habitat adjacent to the Snake River.

**Response:** The Corps is not the landowner and must abide by the provisions in the applicable easement when performing O&M. In general, the easements only allow the Corps to perform O&M actions related to providing flood risk reduction. The easements do not have provisions for improving habitat. However, the Corps can minimize the removal of riparian vegetation by clearing only what is required to provide adequate flood risk reduction. The Corps may also request a vegetation variance to not remove woody riparian vegetation from areas that could meet the requirements for such a variance. The Corps also plans to avoid wetlands, if possible, when performing ground disturbing activities such as siting additional turnarounds or extending existing ones. The Corps is able to partner with local sponsors in ecosystem restoration efforts that support wetland/riparian habitats.