STATE OF CALIFORNIA – CALIFORNIA NATURAL RESOURCES AGENCY ARNOLD SCHWARZENEGGER, GOVERNOR

CENTRAL VALLEY FLOOD PROTECTION BOARD
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April 21, 2010

U.S. Army Corps of Engineers
Attn: CECW–CE, Douglas J. Wade
441 G Street, N.W.
Washington, DC 20314–1000

Subject: Comments on the Policy Guidance Letter – Variance from Vegetation Standards for Levees and Floodwalls Docket Number COE–2010–0007, Federal Register / Vol. 75, No. 26 / Tuesday, February 9, 2010

Dear Mr. Wade:

The Central Valley Flood Protection Board (Board) is responsible for managing flooding along the Sacramento and San Joaquin Rivers and their tributaries in cooperation with the U.S. Army Corps of Engineers (Corps). The Board also maintains the integrity of the existing federal flood control system through its regulatory authority by approving projects and issuing permits for encroachments. The jurisdiction of the Board includes 1,600-miles of levees in California's Central Valley, including the floodways of all tributaries and distributaries of the Sacramento River and the San Joaquin River.

The Board staff has reviewed the proposed process for *Requesting a Variance from Vegetation Standards for Levees and Floodwalls*. On behalf of Central Valley Flood Protection Board, I have the following comments regarding the Policy Guidance and associated draft Finding of No Significant Impact (FONSI) and Environmental Assessment (EA):

1. The Board appreciates the Corps' efforts in collaborating with the State and local agencies to develop a shared vision for addressing California's flood risk. This collaboration resulted in the March 2009 document entitled *California's Central Valley Flood System Improvement Framework* (Framework), which describes a short-term approach for flood system improvements that are already underway until a comprehensive plan is ready in 2012. The Framework also acknowledged that the "legacy levees" built immediately adjacent to California's major riverine systems present a unique challenge that will likely require regional variance. The Framework document also states that participating agencies will continue to collaborate as partners for the implementation of the Framework agreements and the subsequent Central Valley Flood Protection Plan (CVFPP) to improve public safety and environmental sustainability.

   In a letter to me from Steven L. Stockton dated April 2, 2010 (copy attached), Mr. Stockton stated that the Corps remains committed to support the implementation of the Framework and that the Framework is the guiding document as California continues to develop a long term plan for system improvements including vegetation management. We understand from Mr. Stockton's letter and appreciate that the "draft vegetation variance published in the federal register will not supercede the Framework."

2. The Board is very concerned that the draft guidance was developed by the Corps without engaging any State or local stakeholders. This action was a departure from the Corps active support and participation in the California Roundtable. Considering the magnitude of the implications the policy guidance potentially has for California's flood control system, I encourage the Corps to continue to work collaboratively with the California Roundtable and its stakeholders to address the concerns of State and local flood management agencies about the proposed policy guidance.

3. We are also concerned that the efforts needed to obtain a vegetation variance for the "legacy levees" under the proposed policy would divert funding and attention away from other critical threats to California's flood system (channel capacity, seepage, erosion, structural instability and seismic loading) that must be addressed together with the vegetation management to reduce the risk of flooding. One of our local partners, Sacramento Area Flood Control Agency (SAFCA) has applied for a variance using the draft variance process policy guidance and they devoted approximately $300,000 over 90 days to develop the materials to comply with the Corps' process. If we are required to divert funds from flood protection improvements to study vegetation impacts and its subsequent removal, we are hereby requesting that the Corps cost share at 65-percent with the non-federal sponsors for these new requirements.

4. The Variance Policy states that all existing variances, agreements, or other deviations for existing vegetation need to be submitted for Agency Technical Review (ATR) by September 30, 2010, or the deviation may be considered invalid. We understand that since the Framework is the guiding document for California's Central Valley, then existing variances will not be subject to ATR. If that is not the case, then we respectfully request that this deadline be extended by 3-years to September 30, 2013, so that the Central Valley Flood Protection Board can prepare various submittal packages including drawings, engineering analyses, inspection reports, summaries of system performance, maintenance plans, and NEPA documents and that the Corps cost share at 65 percent of the substantial expense necessary to comply with this requirement. We believe the September 30, 2010 deadline is unreasonable because we cannot prepare NEPA documents, hold hearings, and complete ESA consultations in a 6-month time period. We estimate that it will take several years to complete the NEPA documents and obtain regulatory permits for variances for existing vegetation, as outlined in the proposed policy.

Cost share not provided

5. The proposed policy guidance states in Section 9 (a), "Variances will be considered only for individual levee systems or portions thereof." Vegetation variance requests for small sections of the project levees would result in significant costs and time necessary to prepare and review such requests. Therefore, I strongly recommend that the policy guidance should allow vegetation variances on a regional basis, similar to the Framework approach which applies to California's Central Valley, rather than individual levee systems or portions thereof.

Regional Variance NOT Allowed or offered

6. We have reviewed the Draft EA FONSI, and we respectfully disagree that there will be no significant impacts from implementing the Variance Process or complying with Engineer Technical Letter (ETL) 1110-2-571. Section 9 (e) of the Variance Process states that "...no vegetation variance involving woody vegetation, as defined in ETL 1110-2-571 shall be granted for the following portions of a levee: upper third of the river-side slope, the crown, the land-side slope, or within 15-feet of the land-side slope."

   California's Central Valley system is being managed under the agreements in the Framework and therefore is not covered by the Variance Process until the Central Valley Flood Protection Plan (CVFPP) is adopted. However, we are concerned that much of the levee system under the Board's jurisdiction does not comply with the ETL vegetation standards. We anticipate that as part of the CVFPP in 2012 we would be seeking variances because in order to bring these levees into compliance with these standards, California would need to remove hundreds of miles of the remaining riparian forests in the Central Valley of California. The removal of this vegetation would have significant impacts on several endangered or threatened wildlife species including the Delta Smelt, Long-Fin Smelt, Chinook Salmon, Central Valley Steelhead, Valley Elderberry Longhorn Beetle, Giant Garter Snake, Swainson's Hawk, Burrowing Owl, California Tiger Salamander, and Red-Legged Frog. Since the implementation of this policy would eliminate the last remaining riparian forest in California, and destroy the habitat for several endangered or threatened species, we would recommend that the Corps prepare an EIS for the system-wide removal of vegetation in the Central Valley of California.

   We disagree with the EA FONSI findings that each non-federal sponsor should prepare an independent environmental assessment. We recommend that a comprehensive EIS should be prepared by the Corps to evaluate the cumulative impacts of removing riparian vegetation on a system-wide basis. This is consistent with the Corps' direction to address impacts on a system wide basis as well as the State's approach to the CVFPP. It will be difficult, or nearly impossible, for each non-federal sponsor to evaluate cumulative impacts when requesting variances for only a portion of the levee system.

   Thank you for your consideration of these comments. We look forward to continuing our close collaboration with the Corps and all other members of the California Roundtable in addressing the Central Valley's significant challenges in improving public safety while preserving our natural resources. If you have any questions regarding this subject, please contact Jay Punia, the Board's Executive Officer, at (916) 574-0609, or by e-mail at jpunia@water.ca.gov, or you may contact James Herota, Staff Environmental Scientist, at (916) 574-0651, or by e-mail at jherota@water.ca.gov.

Sincerely,

Benjamin F. Carter
Board President

Attachment

cc: (See attached list)

cc: Mr. Mark Cowin, Director
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CVFPB Members

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APR 2 2010

South Pacific Division
Regional Integration Team

Mr. Benjamin F. Carter
President
Central Valley Flood Protection Board
3310 El Camino Ave., Rm. LL40
Sacramento, CA 95821

Dear Mr. Carter:

Thank you for your letter dated February 8, 2010. I am responding to your letter on behalf of the Chief of Engineers. The U.S. Army Corps of Engineers (USACE) is committed to continue working collaboratively with the State of California in developing a shared vision to address California's flood risk in a systematic and holistic manner. We also strive to work cooperatively and collaboratively with all our State and local governmental agency partners. Thus, we have gone to the extraordinary effort of publishing the draft Policy Guidance Letter – Variance from Vegetation Standards for Levees and Floodwalls, for input from you and other interested parties nationwide. When the Federal Register is used as a vehicle to obtain public input, we are required to provide everyone an equal review period. The Policy Guidance was published in the Federal Register on February 9, 2010, and is still under public review. The 30 day review was extended an additional 45 days to allow additional review time.

Addressing the levee issues and challenges facing California is one of our priorities. Therefore, we will continue to seek opportunities to collaborate to find common solutions. One opportunity is to continue to support implementation of the Central Valley Framework Agreement wh[illegible] [illegible] factors, other than vegetation on levees, may constitute higher flood risk to California's citizens. Our support was demonstrated in January 2010 when California Department of Water Resources (DWR) and USACE leadership met to discuss the progress and implementation of the Framework Agreement, and at the February 25, 2010, Roundtable held in California. The Framework Agreement will continue to be the guiding document as DWR continues to develop its long-term plan to resolve vegetation issues; a plan we understand will be finalized and provided to the USACE in July 2012. The draft vegetation variance process published in the Federal Register will not supersede the Framework. Further, the Corps will continue engagement with our Federal resource agencies' national partners such as National Marine Fisheries Service, Environmental Protection Agency, and Fish and Wildlife Service on flood risk issues, including the effects of vegetation on levee systems. The USACE considers the continued implementation of system-wide flood risk management strategies such as the Central Valley Framework Agreement to be one of the Civil Works top seven priority actions.

I understand Mr. Hecker will be attending the April 22, 2010, Roundtable meeting to discuss comments received on the draft policy guidance.

I look forward to continue working with you and others in solving California's levee issues.

Sincerely,

Steven L. Stockton, P.E.
Director of Civil Works