STATE OF CALIFORNIA – CALIFORNIA NATURAL RESOURCES AGENCY **Edmund G. Brown JR.,** GOVERNOR

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March 23, 2012

U.S. Army Corps of Engineers
Attn: CECW–CE, Tammy Conforti
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. 77, No. 33 / Friday, February 17, 2012

Dear Ms. Conforti:

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 (USACE). The Board also maintains the integrity of the existing federal flood control system through its regulatory authority by approving projects, issuing permits, and conducting enforcement. 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.

Our Board has reviewed the proposed *Process for Requesting a Variance from Vegetation Standards for Levees and Floodwalls; Additional Filings,* and finds the policy **unacceptable** to the State of California as written. We submit the following specific comments to list our concerns:

1. A direct written response has not been received to our previous comment letter dated April 21, 2010. Instead a generic response to four general categories of public comments was issued in December 2011, nearly 18 months later. Our office requests an individual response to the six (6) previous comments we made.

2. PGL Paragraph 10a states *"The levee sponsor will have one year … to submit a vegetation variance request or develop a system-wide improvement framework (SWIF)."*.
   The SWIF Policy fails to contribute to a solution because it only addresses PL 84-99 eligibility, rather than the broad range of situations in which USACE has been applying the ETL The temporary relief from PL 84-99 ineligibility offered by the SWIF Policy does not address these broader problems. Another shortcoming is that the SWIF approach is not an independent pathway to a variance from the ETL. The SWIF Policy itself indicates only that it "may complement the vegetation variance request process" and that it "may be useful in development of a vegetation variance request."

3. PGL Reference K – Memorandum, HQ USACE (CECW-HS), Policy for Development and Implementation of System-Wide Improvement Frameworks (SWIFs), 29 November 2011 was released without a formal public comment period. California was not provided an adequate opportunity to comment on the SWIF policy. We

request that the SWIF policy be published in the Federal Register so our office can add our comments to the federal record.

4. The Board is very concerned that the draft variance policy 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 this 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 this proposed policy guidance.

5. 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, such as channel capacity, seepage, erosion, structural instability, and seismic loading, that must be addressed together with vegetation management to reduce the risk of flooding. This point has been made repeatedly over the past two years in correspondence to USACE and the ASA for Civil Works from numerous State and local agencies and elected officials, and from members of Congress.

6. The proposed policy guidance states in Section 9 (c), "*Regional variances or variances that cover all levees within a geographical area will not be issued*." The Board's regulatory jurisdiction is for the entire Central Valley of California including all tributaries and distributaries of the Sacramento and San Joaquin Rivers and the Tulare and Buena Vista basins. We regulate the State-Federal flood control levees in this region by enforcing the California Water Code and the California Code of Regulations. Because our regulatory authority governs a defined region the vegetation policy variance must cover the same region to be equitable and enforceable. 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, we 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.

7. Section 9 (d) of the Variance Process states that "*Typically the upper third of the waterside slope, the crown, the landside slope, and within 15 feet of the landside toe (subject to preexisting real estate interest) of the levee needs to remain vegetation free*, *as defined in ETL 1110-2-571."* The California Levees Roundtable framework allows vegetation on the waterside levee slope provided that tree limbs are trimmed to 5 feet above grade for visibility and access. Our position is that water side vegetation be retained for habitat and erosion control purposes. 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. The implementation of this policy would eliminate the last remaining riparian forest in California, and destroy the habitat for several endangered or threatened species. To protect this resource the California Department of Fish and Game and the organization "Friends of the River"

have filed suit against this policy for failure to comply with the National Environmental Policy Act (NEPA).

8. PGL Section VII Obligations of the Levee Sponsor, states "*The levee sponsor agrees to maintain the levee system in accordance with the attached approved vegetation variance and assume the responsibility for implementing and bearing the costs of any measures that are required for compliance with the ESA or any mitigation requirements that result from environmental compliance processes such as NEPA or required permits."* This condition places the entire financial burden on the State of California as sponsor and does not provide any funding from the Federal Government to implement this action. It is unreasonable for United States Army Corps of Engineers to dictate the terms of this policy but not share the costs or responsibility to implement it. We therefore request a funding program be established by Congress to contribute to the State's cost to implement and enforce levee regulations.

Thank you for consideration of these comments. We look forward to a response that addresses California'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, jpunia@water.ca.gov, or Curt Taras, Supervising Engineer, at (916) 574-0684, ctaras@water.ca.gov.

Sincerely,

William Edgar
Board President

Attachment

cc: (See attached list)