

RECLAMATION DISTRICT 2035
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July 24, 2008

VIA E-MAIL (Email: floodsafe@water.ca.gov)

Mr. Dan Flory
FloodSAFE Program Manager
Department of Water Resources
P.O. Box 942836
Sacramento, CA 94236-0001

Re: Comments on Draft FloodSAFE Strategic Plan (dated 5/28/2008)

Dear Mr. Flory:

This letter provides comments from Reclamation District 2035 ("RD 2035") regarding the above-noted Plan. In an attempt to improve flood management throughout California, the FloodSAFE plan is groundbreaking and is to be commended for attempting to provide a framework to resolve flood issues throughout the State.

A. Reclamation District 2035

RD 2035 was formed in 1919 to provide levee maintenance and drainage services to approximately 20,500 acres of land in Yolo County near the City of Woodland. RD 2035 is a local public entity that has legal authority and jurisdiction under Water Code Section 50000 et seq. to implement flood control programs and projects that reconstruct, replace, improve, or add to facilities as defined in Public Resources Code Section 5096.805(j). RD 2035's service area includes the Conaway Ranch property. The Conaway Ranch property covers over 17,000 acres on the west side of the Sacramento River between the cities of Davis and Woodland. Approximately 40 percent of the Ranch is located within the Yolo Bypass and the remainder lies west of the bypass. Both RD 2035 and the Conaway Preservation Group, LLC, which manages the Conaway Ranch, are actively involved in encouraging and seeking solutions to the region's flood problems while conserving open space, agriculture, and rural and environmental values.

B. FloodSAFE Improperly Links Flood Protection with Flood Damage

The Vision statement includes the phrase "reduce the probability of destructive floods" and one of the Goals is to "reduce the chance of flooding," but the Vision section contains a definition of "flood risk" that is not in accordance with these generally held definitions of flood risk. Consequently, the current definition of "flood risk" could confuse the public, the Legislature, and other participants in the planning process. In fact, the current definition of "flood risk" leaves much to be desired and provides the potential to skew the planning process in ways that could

significantly shift the probability of flooding away from higher value areas at the expense of lower value areas.

The current definition of “flood risk” needs to be altered to define risk as a chance of flood damage, not as that chance multiplied by the cost of the ensuing damages. There is a fundamental mathematical and scientific basis for this: one cannot merely multiply the values, but one must multiply the units as well. Under the current FloodSAFE definition and equation, there is no way to do this because “flood risk” is defined as a dollar value (per year), not as a probability or a percent chance of occurrence or non-occurrence of a flood event as most would expect it to be.

Because the current measure focuses on dollars, there will be a tendency to reduce the “flood risk” by directing available funding toward high value lands at the expense of lower value lands, all the while claiming that the “flood risk” to the State has been reduced. Certainly all who hear “flood risk is reduced” will assume that flooding will occur less often. But, in reality, the flooding may occur more often on some lands while other lands enjoy an increase in flood protection. This focus on providing funding to only parts of the flood system is counter to the direction and intent of Public Resources Code section 5096.821(a) that bonds funds be used to evaluate, repair, rehabilitate, reconstruct, or replace all portions and facilities of the State Plan of Flood Control necessary to achieve the most public benefit, which is not calculated only in dollars. It appears that the Plan invalidly interprets the “urban area” focus of Public Resources Code section 5096.821(b), which applies only to “improving or adding facilities to the State Plan of Flood Control,” as applying to all of the directives contained Public Resources Code section 5096.821.

Therefore, the Plan’s current definition of “flood risk” is not useful, may be misleading, and is at least subject to misinterpretation. It would be better to rename this concept to include dollars as its units – something along the lines of “expected flood damages” or “flood damage liability.” If, alternatively, FloodSAFE is attempting to identify areas where flood flows should be diverted and those areas that must be protected at all costs, a more clear and overt explanation of this objective and the methodology that will be employed should be provided.

C. FloodSAFE Requires CEQA Review

While the Strategic Plan is only in draft form and obviously a programmatic document, it appears to already be making choices and decisions that will steer the implementation of flood protection projects in the next decade. One such example, the peculiar definition of flood risk, is discussed in this letter. By steering the focus of flood risk toward so-called urban levees, the Strategic Plan also funnels all the funding for flood protection to these areas. Therefore, the FloodSAFE Strategic Plan is essentially relegating so-called non-urban areas to reduced flood protection and increased risk of flooding without considering the environmental ramifications of this choice.

Under the California Environmental Quality Act (“CEQA”), any activity directly undertaken by a State agency that has the potential to cause a direct physical change in the natural and human environments, or a reasonably foreseeable indirect physical change, qualifies as a “project”

requiring environmental review. (CEQA Guidelines § 15378.) Furthermore, CEQA's broad definition of the word "project" must be construed liberally "so as to afford the fullest possible protection to the environment." (*Friends of Mammoth v. Board of Supervisors of Mono County*, 8 Cal.3d 247, 259 (1972).) Also, CEQA review should be conducted at the earliest possible time so that development and consideration of alternatives are not foreclosed by irreversible bureaucratic momentum. Agency action approving or opening the way for a future development can be part of a project and can trigger CEQA even if the action takes place prior to planning or approval of all the specific features of the planned development. (*Fullerton Joint Union High School Dist. v. State Bd. of Education*, 32 Cal.3d 779 (1982).)

Implementing the Plan according to the proposed definition of flood risk will cause numerous environmental effects. These effects include potential loss or damage to important agricultural lands, potential damage to cultural resources, possible damage to important wildlife or fish habitat, water quality contamination, destruction of critical infrastructure such as wastewater treatment, other utilities, and transportation corridors. Depriving rural areas of flood protection could also cause adverse economic consequences in rural areas that would lead to urban blight and decay in Central Valley towns. These should be acknowledged and evaluated in the CEQA context to determine if other less environmentally damaging alternatives are available, or if feasible mitigation measures are available.

The Plan is a program-level document, and DWR should accordingly conduct program-level CEQA review. There is little doubt the Strategic Plan, much like a land-use General Plan or Transportation Plan, is the first step towards implementation of numerous projects that will have individual, collective, and cumulative environmental effects. For instance, the Strategic Plan states that in "2006 the Department of Water Resources launched FloodSAFE California – a multi-faceted program to improve public safety through integrated flood management." (Plan at 2) The Plan also indicates that the "FloodSAFE Program builds on recent progress fueled by almost \$5 billion provided through recently approved bond measures." (Plan at 2) Accordingly, "DWR will invest the funds provided by Propositions 1E and 84 to reduce potential flood damages in the highest risk areas within the next 10 years in a way consistent with the vision." (Plan at 5) Furthermore, the Plan states that "[t]he purpose of the FloodSAFE Strategic Plan is to ... describe an implementation approach that can bring about the desired results. ... DWR will take a lead role to implement FloodSAFE and will work closely with state, tribal, federal, and local partners to help improve integrated flood management systems statewide." (Plan at 8) Given the assured public bond funding, direct and indirect physical changes in the environment are not just reasonably foreseeable, they are inevitable – the Strategic Plan will guide the overall shape of these impacts.

Importantly, the Plan also states that the "FloodSAFE Program includes significant actions designed to improve existing facilities, processes, and preparedness" and that "[m]any difficult decisions must be made over the next several years related to how DWR and its partners will invest available funds to help meet the goals of FloodSAFE." (Plan at 26) To provide an analysis of the effects of the difficult programmatic decisions now being made, DWR must invoke the CEQA process now.

Public Resources Code section 5096.820(a) requires “project selection and project design to achieve the maximum public benefits from the use of these funds.” CEQA is the mechanism for insuring that the public and decision-makers are fully apprised of the environmental consequences of particular decisions and the availability of alternatives or mitigation so that the maximum public benefit is achieved. It also enables the public to determine the environmental and economic values of their elected and appointed officials, and it allows for appropriate action come election day should a majority of voters disagree. (*People v. County of Kern*, 39 Cal.App.3d 830; CEQA Guidelines §15003.) Unfortunately, the FloodSAFE website solicits comments on the Plan, but then prominently states “[n]o written responses to comments will be provided.” This is manifestly contrary to CEQA and good public policy. DWR must engage the CEQA process immediately.

D. Systemwide Integration for Optimal Flood Protection

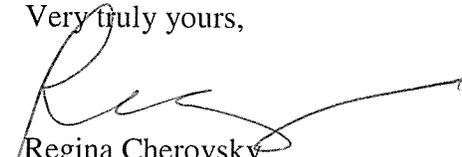
Flood protection throughout the Central Valley is achieved by the combined effects of various components including levees, weirs, bypasses, reservoirs, and detention basins. The Strategic Plan does not discuss the integration of the construction, maintenance, and operation of these systems to optimize flood protection. Will DWR, through FloodSAFE or other mechanisms, evaluate the integrated operation of all these components to achieve optimal flood protection?

E. Conclusion

The FloodSAFE Draft Strategic Plan blurs the distinction between reducing flood risk as it is usually thought of (as reducing the probability of flooding) and reducing the damages caused by floods. Its definition of flood risk weighs heavily on damages to the potential detriment of reducing the probability of damaging floods. It also creates an artificial distinction between levees that protect urban areas because they are close to those areas and levees that, while part of the overall plan to provide flood protection in the Central Valley, are not proximate to urban areas but, nevertheless, still provide the function of moving flood waters safely past those urban areas and, just as importantly, protect essential public infrastructure from flooding.

The wording in the Strategic Plan must be clarified to outline a flood control vision that will not define its terms so as to sacrifice flood protection for so-called lower value areas to achieve flood protection for high value areas.

Very truly yours,



Regina Cherovsky
Chairperson, RD 2035