April 15, 2010

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

Dear Mr. Wade:

The California Department of Water Resources (DWR) and the California Department of Fish and Game (DFG) appreciate the opportunity to provide comments on the process for requesting a variance from the U.S. Army Corps of Engineers' (Corps) vegetation standards for levees and floodwalls. Our joint comment letter reflects the critical importance of coordinating public safety improvements with protection of the unique and irreplaceable fisheries and wildlife habitats associated with the Central Valley state-federal flood protection system. Although focused on the Central Valley, our comments are generally applicable to other levee systems throughout the state of California.

Our agencies value the historic collaboration we have shared with the Corps and we look forward to continuing this positive relationship. Over several decades, we have worked closely with the Corps to address flood safety and environmental issues in a balanced approach. This successful relationship is manifested in emergency levee repairs, capital improvements, operations and maintenance improvements, and is all the more notable in view of the growing framework of federal and state environmental protective laws, regulations and procedures. Most recently, these collaborative efforts led to the joint issuance, by the California Levee Roundtable (Roundtable), of the *California's Central Valley Flood System Improvement Framework* (Framework) in February 2009. This successful collaboration of local, state and federal agencies provides a balanced approach to interim levee management while the Central Valley Flood Protection Plan is being prepared.

Against this backdrop of thoughtful and strategic collaboration, the Corps' issuance of the 2009 ETL 1110-2-571, coupled with the proposed national Vegetation Variance Process (VVP), represent a major departure in both process and substance, and are a cause for grave concerns by our departments. We urge the Corps to cease implementation of this new policy and procedures and continue our successful collaboration to develop a regional variance process that serves both the Corps' and California's mutual interests.

We agree with the Corps that public safety is the highest priority in the management of the Central Valley state-federal flood protection system. Moreover, we believe that the proposed Corps vegetation policy contained in the ETL and VVP will have the unintended effect of impairing public safety primarily through several mechanisms, none of which is recognized in the ETL and VVP:

- The extremely high costs of levee construction and mitigation resulting from this policy will divert limited resources from the remediation of critical risk factors, with little or no improvement in public safety.
- Existing waterside vegetation that currently provides erosion protection and soil reinforcement would be eliminated, thus increasing the risk of waterside scour and slope failures.
- Wholesale clear cutting of established trees and other vegetation along hundreds of miles of levees may also lead to other negative effects on levee integrity.

Whereas overtopping, underseepage, through-seepage, erosion and other high-risk modes of failure are well-documented in the Central Valley, we have not seen evidence that well-managed vegetation poses significant risks. We are not aware of any levee failures in the Central Valley that were caused by woody vegetation on levees, and interim studies suggest that woody vegetation has negligible detrimental effects on levee performance as well.

When the Central Valley flood protection system was turned over to the state to operate and maintain, woody vegetation was already an integral component of the levees and channels. Thus, we believe that the Corps should make a clear distinction between existing levee systems and new federal project improvements. We accept the concept that new levees should be constructed and maintained in compliance with the ETL, but a more regionally adaptable approach that recognizes the integration of woody vegetation is imperative for existing levees.

The proposed vegetation policy will likely have devastating environmental impacts, as the remnants of the once vast riparian forests and adjacent riverine ecosystems of the Central Valley are now concentrated on the banks and levees of its flood channels. Many of California's fish and wildlife resources evolved in this complex and diverse natural community and are listed as state or federal threatened or endangered species due to the cumulative loss of habitat along riparian corridors. The proposed policy would greatly contribute to those cumulative losses and could result in the removal of mitigation vegetation planted in association with earlier flood management projects. Because of the foreseeable environmental impacts that would result from implementing the Corps' proposal, we believe there is a legal necessity for the Corps to initiate the preparation of an environmental impact statement (EIS) under the National Environmental Policy Act (NEPA), and consultation under the Endangered Species Act (ESA), to explore the full effects, including cumulative impacts, of the ETL and the VVP on the natural and human environment, including socioeconomic consequences.

The Corps ETL and VVP will inappropriately shift the burden of implementation, including environmental compliance, to state and local agencies. This represents a dramatic departure from the balanced and collaborative approach we have mutually achieved over time.

While the stated intent of the VVP is to provide a process for obtaining an exemption from the ETL's prohibition on woody vegetation, in practice the proposed requirements are so stringent and ambiguous that variances are unlikely to be issued except perhaps under specialized, local circumstances.

In cooperation with the Corps, DWR is conducting an engineering evaluation of 2,100 miles of project and appurtenant non-project levees in the Central Valley. This study is central to formulation of the Central Valley Flood Protection Plan, a system-wide approach to Central Valley levee management that recognizes the various levels of flood protection needed for urban areas, small communities, and agricultural areas, as well as the beneficial habitat and structural values provided by properly managed vegetation. As written, the Corps' vegetation policy will make it extremely difficult for the state to implement this system-wide approach by prematurely implementing rigid and uniform standards before completion of the Central Valley Flood Protection Plan.

We commend the Corps for its willingness to collaborate with state and local agencies to develop the scientific knowledge needed to better understand and quantify the benefits and risks associated with woody vegetation on levees. Rather than proceeding ahead of this research, we urge that the Corps allow the research results to inform its regulatory processes.

Our comments are discussed in greater detail in the attachment. We believe that a variance process can be attained that is practical, integrated and regionally adaptable, but not under the Corps' current implementation of new policy and procedures. To this end, we look forward to continuing our collaboration with the Corps to develop an approach to levee vegetation management that is fully responsive to public safety needs, informed by scientific research, and consistent with our mutual commitments to environmental protection and enhancement.

Sincerely,

Mark W. Cowin, Director
Department of Water Resources

John McCamman, Director
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Attachment

cc: (See attached list.)

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