



ARNOLD SCHWARZENEGGER, Governor
LESTER A. SNOW, Secretary for Natural Resources

November 3, 2010

Honorable Jo-Ellen Darcy
Assistant Secretary of the Army
Office of the Assistant Secretary of the Army
(Civil Works)
108 Army Pentagon
Room 3E446
Washington, D.C. 20310-0108

Dear Assistant Secretary Darcy:

I am writing as a follow-up to my January 13, 2010 letter to you citing specific negative outcomes of proposed levee vegetation policy and process changes by the U.S. Army Corps of Engineers' (Corps). The California Natural Resources Agency, the Department of Water Resources (DWR), the Central Valley Flood Protection Board (CVFPB), and the Department of Fish and Game (DFG) have all expressed concerns to the Corps through meetings of the California Roundtable and through previous correspondence. While we appreciate the difficulty in developing and implementing a nationwide regional variance process and then applying it to the extensive legacy levee system in the Central Valley, we again request that the Corps indefinitely suspend implementation of its vegetation policy in order to collaborate with California representatives and others to formulate and adopt a workable regional levee vegetation variance process consistent with the February 2009 California Central Valley Flood System Improvement Framework (Framework) and to address impacts consistent with NEPA and ESA.

A foundational issue with the Corps' April 2009 ETL 1110-2-571, and the proposed variance policy, Policy Guidance Letter for Requesting a Variance From Vegetation Standards for Levees and Floodwalls (PGL), is that levees having "legacy vegetation" (woody vegetation that existed on levees when the Corps turned over these levees to the State of California) are not distinguished from new levees. To advance improvements to the Central Valley Flood Protection System (CVFPS), a regional variance approach for existing levees that recognizes the integration of woody vegetation to meet NEPA and ESA requirements is imperative.

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Baldwin Hills Conservancy • California Coastal Commission • California Coastal Conservancy • California Conservation Corps • California Tahoe Conservancy • Central Valley Flood Protection Board
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Department of Fish & Game • Department of Forestry & Fire Protection • Department of Parks & Recreation • Department of Resources Recycling and Recovery • Department of Water Resources
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San Francisco Bay Conservation & Development Commission • San Gabriel & Lower Los Angeles Rivers & Mountains Conservancy • San Joaquin River Conservancy
Santa Monica Mountains Conservancy • Sierra Nevada Conservancy • State Lands Commission • Wildlife Conservation Board



Based on available information, the Corps' methodology for analyzing vegetation in the Natomas Levee Improvement Program does not appear consistent nor repeatable. We are also confused by the application of prescriptive variance policy retroactively on recently-completed critical erosion repairs with Corps' participation and prospectively on future projects currently in the planning phase. All of these actions are at odds with the Framework agreement and have immediate and severe consequences for billions of dollars of local and State flood risk reduction investments over the next several years. We assert that these actions will have the unintended result of reducing public safety. We have described a number of specific and harmful consequences resulting from these actions with the Chief of Engineering and Construction, James Dalton.

During the August 19, 2010 meeting of the California Levees Roundtable, DWR and CVFPB representatives were surprised to learn that Corps Headquarters staff were proceeding toward adoption of the PGL in October 2010 without engaging further with any of the non-federal entities who will be deeply affected by application of the PGL despite receiving over 450 comments on the proposed policy. Additionally, the Corps would not commit to releasing these comments to other reviewers. This lack of transparency and cooperation was contrary to the spirit of collaboration expressed in your March 8, 2010 letter to me. We were encouraged by the recent posting of comments on the Corps' website, and it is our understanding that PGL adoption has been deferred until the end of this year. However, it is essential that the Corps engage meaningfully with non-federal entities – without regard to a pre-set timeline – in order to formulate an implementable vegetation policy.

On April 15, 2010, the State of California submitted a 71-page letter to the Corps from the DWR and DFG enumerating our many concerns with Corps vegetation policy and processes. Several key points regarding the adverse consequences of implementing the ETL through the Vegetation Variance Process described in the PGL were emphasized:

- Public safety will be impaired:
 - Extremely high costs of levee construction and mitigation will divert limited resources from the remediation of critical risk factors.
 - Increased risk of water-side scour and slope failures due to loss of vegetative cover.
 - Wholesale clear cutting of established trees and other vegetation will cause other negative effects on levee integrity.
- Much of the CVFPS levees had woody vegetation when California accepted responsibility for operations and maintenance.
- Whereas overtopping, underseepage, through-seepage, erosion and other modes of failure are well-documented and understood in the Central Valley, DWR has not seen evidence that well-managed vegetation substantially contributes to these failure modes.
- The proposed vegetation policy would have devastating environmental impacts.
- There is a legal necessity for the Corps to initiate preparation of an Environmental Impact Statement under the National Environmental Policy Act and consultation under the Endangered Species Act.
- The burden of implementation, including environmental compliance, inappropriately shifts to State and local agencies.

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- The proposed requirements in the PGL are so stringent and ambiguous that variances are unlikely to be issued except under rare, specialized, local circumstances.
- Science is lacking to support the highly prescriptive actions mandated by Corps vegetation policy. The Corps should allow ongoing scientific research to inform its regulatory process before proceeding.
- Implementation of these rigid and uniform standards before completion of the Central Valley Flood Protection Plan (CVFPP) will make it extremely difficult for the State to implement system-wide improvements. This action conflicts with the Corps' system-wide approach to flood risk reduction.

The Corps' focus on enforcing compliance with its national standards for levee vegetation is impeding pending construction projects and hampering California's preparation of the CVFPP as well as other planning efforts. Under the path currently being taken by the Corps, the State of California sees no practical opportunity for obtaining regional variances from the ETL needed to address legacy vegetation issues. The State is spending billions of dollars to formulate and implement a system-wide, sustainable approach to flood risk reduction in California. California's comment letter on the variance policy noted the lack of scientific and legal sufficiency for implementation of the ETL, and we believe that literal enforcement of the ETL in all sections of the CVFPP will not be feasible due to unmitigable impacts on endangered species, recreation, visual resources, and water quality. The CVFPP will consider management actions for levee system vegetation management focusing on enforcing the visibility and accessibility criteria, developing life-cycle monitoring and maintenance for vegetation, and, where feasible, separating the flood system from the river bank and its attendant riparian vegetation (i.e., setbacks). A fundamental principle of the Framework and of the CVFPP is that a practical, regional variance process will be implemented by 2012 and/or some provisions of the ETL will change over time to reflect scientific research and engineering practice.

I respectfully request that you direct the Corps to suspend implementation of the ETL and their proposed adoption of the unduly restrictive vegetation variance procedures set forth in the proposed PGL. Instead, we urge you to facilitate the Corps' collaboration with California and other non-federal partners to develop a practical, repeatable, regional variance process which will enable us to move forward together on short and long-term system improvements. In conclusion, please redirect the enormous resources being expended on the levee vegetation issue to assisting California in addressing the broader scope of integrated issues including the most important flood risk factors, water supply reliability and sustainability, and ecosystem protection and enhancement.

If you have any questions or wish to discuss these important issues further, please do not hesitate to call me at (916) 653-7310 or Dale K. Hoffman-Floerke, DWR Deputy Director for Integrated Water Management at (916) 654-7180.

Sincerely,



Lester A. Snow,
Secretary for Natural Resources

cc: (See attached list.)