



United States Department of the Interior



FISH AND WILDLIFE SERVICE
Pacific Southwest Region
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In Reply Refer To

APR 17 2012

U.S. Army Corps of Engineers
Attn: CECW-CE Tammy Conforti
441 G Street NW
Washington, DC 20314-1000

Subject: Comments on the Corps of Engineers' (Corps) Draft Environmental Assessment and Finding of No Significant Impact on Policy Guidance Letter-Variance from Vegetation Standards for Levees and Floodwalls and Draft Process for Requesting a Variance from Vegetation Standards for Levees and Floodwalls (docket number COE-2010-0007)

Dear Ms. Conforti:

We appreciate the opportunity to comment on the Corps of Engineers' (Corps) Draft Environmental Assessment and Finding of No Significant Impact (EA/FONSI) on Policy Guidance Letter-Variance from Vegetation Standards for Levees and Floodwalls and Draft Process for Requesting a Variance from Vegetation Standards for Levees and Floodwalls (docket number COE-2010-0007). The following comments are from the Pacific Southwest Region (Region 8) of the U.S. Fish and Wildlife Service (Service).

On April 22, 2010, we provided comments on an earlier version of the above documents. In that letter we acknowledged, and continue to recognize, that human health and safety concerns must be of paramount priority. Many of the specific concerns/issues we raised in that letter are addressed in this revised EA/FONSI. Our two greatest remaining concerns are: (1) loss of existing variance could have a negative effect on recovery of some listed species and (2) denying a variance could be a Federal action that could further harm listed species and/or put additional species at risk. Our comments on the above documents are detailed in Enclosure 1.

As you are aware, the Service has advocated flexibility for local interests to meet multiple objectives, such as public safety, environmental concerns, and assisting in the recovery of species listed under the California and/or Federal Endangered Species Acts. In August 2007 a symposium on the effects of levee vegetation was held in Sacramento. Since then, both the Corps and the California Levee Vegetation Research Program have conducted research on various aspects of vegetation and its influence on levee function. A second symposium is scheduled for August 2012 in Sacramento to showcase what has been learned over the last 5 years regarding flood risk management and levee vegetation within the United States and

elsewhere. Our hope is that the results of this research and future planned research will provide the science to inform decision makers on the relative risk of vegetation on levees for future policy decisions regarding vegetation versus other risk factors associated with levees such as under seepage, through-seepage, and erosion.

Secondly, we support cooperatively developing regional solutions to manage and maintain levees and other flood damage reduction features, while maintaining and enhancing riparian vegetation for the purpose of conserving fish and wildlife species. These cooperative approaches have been critical to the successful implementation of recent projects (both Corps Civil Works and State maintenance activities) in this region and are essential to meet the long-term goals of improving California's flood control system while complying with existing State and Federal laws. We believe the California Department of Water Resources continues to make progress towards sustainable solutions, and would not want to see these efforts impeded by policies which would reduce the ability of local entities to minimize the worst risks for flooding and improve the environment.

The Service is committed to working with the Corps and others to develop alternative solutions for maintaining levees in a manner that improves flood control feature reliability while avoiding or minimizing potential adverse effects to fish and wildlife resources. If you have any questions regarding these comments please contact Susan Moore, Field Supervisor of the Sacramento Fish and Wildlife Office at (916) 414-6700.

Sincerely,



Acting Assistant Regional Director

cc:

Regional Director, Region 1, Portland, OR
Field Supervisor, Bay-Delta FWO, Sacramento, CA
NOAA Fisheries, Sacramento, CA
District Engineer, Sacramento District, Sacramento, CA
District Engineer, San Francisco District, San Francisco, CA
Secretary, California Natural Resources Agency, Sacramento, CA
Director, DWR, Sacramento, CA
Director, CDFG, Sacramento, CA

Enclosure 1

U.S. Fish and Wildlife Service (Region 8) comments on the *Process for Requesting a Variance from Vegetation Standards for Levees and Floodwalls* and associated *Draft Environmental Assessment/Finding of No Significant Impact*, Docket Number COE-2010-0007, 77 Fed Reg. 9637-50

The following general comments are reiterated from those previously provided:

General Comments:

- Section 7(a)(1) of the Endangered Species Act (ESA) requires Federal agencies to review and administer their programs to carry out the purpose of furthering the conservation of federally listed threatened and endangered species and the habitat upon which they depend. Under section 7(a)(2) of the ESA (16 U.S.C. §1536), Federal agencies are directed to ensure that their activities are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat. Enhancement of vegetation on levees in the Central Valley would assist in the recovery of several listed species.
- The Migratory Bird Treaty Act provides that it is unlawful to pursue, hunt, take, capture or kill; attempt to take, capture or kill; possess, offer to or sell, barter, purchase, deliver or cause to be shipped, exported, imported, transported, carried or received any migratory bird, part, nest, egg or product, manufactured or not. Depending on the season in which the vegetation is removed, removal of an active nest could violate the Migratory Bird Treaty Act.
- The California Central Valley is a joint venture for migratory birds which is a self-directed partnership of agencies, organizations, corporations, tribes, or individuals that has formally accepted the responsibility of implementing national or international bird conservation plans within a specific geographic area or for a specific taxonomic group and has received general acceptance in the bird conservation community for such responsibility. The Corps' Sacramento District is one of the partners of the Central Valley Joint Venture. The 2006 Joint Venture plan has a goal of within the next 5 years of creating and enhancing 7,000 acres of riparian habitat for riparian songbird breeding within the Central Valley. Vegetation variances within portions of Central Valley levee systems may be the only way to allow this goal to become a reality.
- Denying a variance would be a Federal action that could further harm listed species and put additional species at risk.

Specific Comments on the Draft EA/FONSI:

Background. We suggest the first sentence in this section be re-written to state: This Environmental Assessment has been prepared to assist USACE in planning and decision making with regards to evaluating the variance process. As currently written it sounds like it is something the Corps would do in the future.

Specific Comments on the Draft Process for Requesting a Variance From Vegetation Standards for Levees and Floodwalls:

Section 7c. Process. Please clarify who can (or will) be a participant in the Agency Technical Review Team.

Section 9a. Special Considerations: Please clarify that revetments does not include riprap bank protection.

Section 9d. Special Considerations: The California Levees Roundtable discussions led to the *California's Central Valley Flood System Improvement Framework* (Framework Agreement), dated February 27, 2009. The Framework Agreement allowed Central Valley levees to retain acceptable ratings and Public Law 84-99 rehabilitation eligibility as long as trees and shrubs were properly trimmed and spaced to allow for visibility, inspection vehicles, and flood fight access. The Framework Agreement also states that this approach "will be reconsidered based on the contents of the CVFPP" [Central Valley Flood Protection Plan]. The CVFPP is now in the review process and is scheduled to be adopted in July, 2012. In addition to the above visibility criteria, the concept of Life Cycle Management (LCM) for existing vegetation over 4 inches dbh on levees is outlined in the CVFPP. The Service has supported both concepts and is committed to working closely with the State of California to further flesh out the LCM concept. We recommend the process document clarify if these efforts meet the Section 6 Eligibility Requirements for Requesting a Vegetation Variance, particularly in respect to a1 and a3.

Section 9J. Special Considerations: If a vegetation variance modifies or is part of a modification of a federally authorized levee and the levee sponsor seeks approval under 33 USC 408, please clarify who would pursue compliance with the Fish and Wildlife Coordination Act (16 USC SEC 661) and where funds to comply with the Act would come from, e.g. the Corps or levee sponsor.