



Santa Barbara County Public Works Department
Flood Control  Water Agency

April 19, 2012

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

**Subject: Army Corps of Engineers Proposed Levee Vegetation Variance Procedures
Federal Register Docket No. COE-2010-0007**

Dear Ms. Darcy:

I would like to comment on the Levee Vegetation Policy and Variance Procedures. The mission of local flood control districts authorized by the California constitution is to protect lives and property from flooding. California's flood control districts share the same mission and similar engineering expertise with the US Army Corps of Engineers. However, with due respect to the Corps, we must differ on the Corps' vegetation management policy and related variance policy. The Corps' singular and inflexible approach to managing vegetation on levees is fundamentally flawed and we appeal to you to direct the Corps to reevaluate their policy. Our words are strong because the consequences are severe and significant; but we mean no disrespect.

It must be understood that again, with all due respect to the Corps, the individual Flood Control Districts have in depth knowledge and experience on individual Levees and facilities that exceed the Corps'. In the case of Santa Barbara County, our staff has a combined level of experience that exceeds 100 years of on the ground experience with our Levee. We are there every day and when the River flows against our Levee, we are there to watch, react, and learn. We know what works and what does not. In some cases, we are working with Corps employees that either only recently visited our Levee, or have never been there.

The Corps' nationwide levee vegetation policy has as an extremely narrow focus and appears to be based on reactionary fear rather than careful forethought. In short, the Corps' policy dictates a "scorched earth," clearing to fifteen feet out from either side of the levee. Our best understanding is that the Katrina Hurricane disaster has shifted the Corps from regional risk-based approach to an extreme and unreasonable risk-avoidance-at-all-cost position. However, we object to being forced to unnecessarily clear benign vegetation at great expense and loss to the environment.

SWIF & Variance do not solve the problem

The newly introduced Systemwide Improvement Framework (SWIF) and proposed variance policy are purported to be flexible and to address local agency needs, but this is absolutely not the case. The SWIF offers a longer timeline to comply with the Corps levee standards, regardless of how inappropriate the standards are. Additional time is appreciated for any needed improvements or repairs. However, our issue is that the scorched earth policy is neither achievable nor necessary for all levees, regardless of the length of time afforded by a SWIF. This new requirement also is not factored into the funding levels that are locked in by California Law. So in most cases, the required work may not be affordable.

One size does not fit the entire nation

At the core, the Corps policies reflect aging and deep levees in the eastern United States and are inappropriate for many of the engineered shallow levees in the western region. Importantly, we also have a very different climate, vegetation palette, and river flows. Some levees are completely dry for 95% of the year, experiencing brief flows only during infrequent rains. As an example, the concerns of levee seepage are not applicable for infrequently flowing channels.

Unachievable policies

Local flood protection agencies must comply with the scorched earth policy at great environmental and financial cost or lose eligibility in the federal flood disaster assistance program (Public Law 84-99). Given the permitting and mitigation challenges for wetlands and endangered species impacts, it is highly doubtful that the scorched earth policy is legally permissible or financially feasible. It appears that the Corps has posed an unachievable criteria and local agencies will simply be rejected from federal disaster assistance.

Impractical and unrealistic policies

Policies and goals should be ambitious, however, the SWIF and variance policy is detached from reality. Preparing a systemwide plan or variance request with multiple detailed engineering studies, coordination with multiple levee owners, consultation with state and federal endangered species and wetlands regulators, and approval by seven layers of Corps signatories will absolutely not be done in two years. The Corps' own feasibility studies have taken upwards of a decade and the new "Corps Planning Paradigm" hopes to reduce the study time to three years, and those do not require environmental, regulatory or levee owner approvals.

Inconsistent with Congressional direction

In the 1996 Water Resources Development Act (WRDA), Section 202(g), Congress directed the Corps to update its vegetation management policy and to consider, among other criteria, "... preserving, protecting, and enhancing natural resources..." Section 202(g) continues "Such revised guidelines shall address regional variations in levee management and resources needs..." A singular policy with a rigid variance procedure does not comply with Congressional direction and is certainly does not address regional variations in levee management.

Inconsistent Application, Corps Quickly Exempts its own Project

In a surprising move, we just noticed the Corps quickly exempted itself from the policy and found reason to allow vegetation on Sacramento Area Levees. Please see this Sacramento

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article. http://www.sacbee.com/2012/04/14/4413341/levee-trees-catch-a-break.html#mi_rss=Our%20Region .

It would seem from this turn of events that the Corps could immediately issues a Statewide variance to the rule since the Corps found a basis in this case, since it cannot now argue that other places are not just as suited to a variance. (Copy of Article attached).

In fact, many other California Levees, especially in Southern California, are more suited to utilize vegetation to its benefit given the short duration of flow.

Conclusion & Recommendations

The Corps' levee vegetation policy and proposed variance policy are flawed. We implore you to suspend the implementation of these policies and direct the Corps to reevaluate the vegetation management approach in compliance with 1996 WRDA Section 202(g) and to include regional flood protection agencies in the development of new sound polices.

These policies need to reflect the following;

- A risk based approach that does the RIGHT THING for that Levee, not the right thing for some other Levee.
- A program that respects the O&M Manuals that agencies have based their program and funding upon.
- A program that is collaborative and not dictatorial utilizing the local expertise to do the right thing.

Finally, we will presume that the Corps will immediately issue any and all permits necessary to complete the work if needed. The Corps cannot issue such orders on one hand, and then withhold 404 permits on the other.

We would like to work with the Corps and welcome any opportunity to collaborate on starting anew. Please let me know if and how we can open a dialogue on a sound levee vegetation policy that works for both the Corps and local flood agencies. Thank you.

Sincerely,



Thomas D. Fayram, P.E.
Deputy Public Works Director

cc: Steve Stockton, P.E., SES, US Army Corps of Engineers, 441 G Street, NW, Washington, DC, 20314-1000
Tammy Conforti, via email: tammy.conforti@usace.army.mil and via post: US Army Corps of Engineers, CECW-CE, 441 G Street, NW, Washington, DC, 20314-1000
Karen Keene, California State Association of Counties, 1100 K Street, Suite 101, Sacramento, CA 95814-3941

enclosure

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Despite policy, Army Corps to plant 30,000 trees on Sacramento River levees

mweiser@sacbee.com

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The U.S. Army Corps of Engineers will plant more than 30,000 trees on Sacramento River levees next winter, a move that would seem to contradict its own policy calling for levees across the state to be stripped of their trees.

The Army Corps in 2007 advised California levee managers that trees and shrubs threaten levee stability and must be removed. The order, which has been put on hold while negotiations continue, would eliminate millions of trees from hundreds of miles of levee in the Central Valley.

It was the first time the national maintenance standard had been imposed in California, which has long operated under separate rules that permit trees. Those trees now compose most of the remaining riparian habitat in the region, providing vital food and cover for wildlife.

In a little-noticed exemption, however, the Corps in October granted itself permission to plant more trees. Officially called a "variance," the move applies to 83 sites, mostly along the Sacramento River, where the Corps performed emergency erosion repairs after storms in 2006.

Those repairs involved removing trees and shrubs and covering the levees with giant hunks of rock, called riprap. Now the Corps will go back to those sites to plant willow trees and bushes.

The Sacramento District of the Corps sought the exemption from its headquarters in Washington, D.C. Claire Marie Turner, a project manager at the Sacramento district, called it evidence the policy can be flexible by allowing trees where they are needed for habitat and don't harm levee safety.

"It provided us an avenue to say, 'The policy doesn't apply, and here's why,'" Turner said. "We did examine this from a hydrologic and geotechnical perspective, and found that planting these willows will not impact levee integrity."

The Army Corps policy allows nothing but grass to grow on levees. In light of the state's objections, the agency has delayed enforcing the policy in California, and no trees have been removed from area levees. Instead, the Corps gave state officials until July of this year to propose an alternative.

If the rule is ultimately imposed, local levee maintenance agencies that don't comply would lose access to federal disaster recovery funds.

The state's proposed alternative, which has yet to be approved, would adhere to Corps policy on newly built levees – in other words, no tree planting – but trees would be allowed to remain on existing levees.

Unlike most of the nation, California's levees were intentionally built close together in the wake of the Gold Rush in order to speed river flow to scour out mining sediment. It was a short-sighted decision. Among other things, the design eliminated natural floodplains between the levees where trees can grow.

As a result, trees shading levees today provide virtually all of the riverside habitat that remains in the Central Valley. State officials and environmental groups have pressed the Corps to let these trees stay, arguing that they provide critical bird habitat and shade that keeps the water cool for migrating salmon.

Bob Wright, an attorney at Friends of the River in Sacramento, said the Corps exemption illustrates the policy's flaws.

He noted, for example, that it took a full year for the Sacramento District of the Army Corps to obtain the exemption, even though the entire process occurred within its own agency. It will have been nearly six years since the levees were stripped for repair, he said, until they are replanted.

"That's a delay factor in which the people are deprived of the scenic beauty of the trees, and the fish and wildlife are deprived of the habitat," Wright said. "When you think about the Corps having to seek a variance from itself to replant vegetation, that's a bad joke."

Friends of the River is suing the Army Corps in an attempt to overturn the tree ban. The California Department of Fish and Game also has filed a notice of intent to sue.

On April 3 a bipartisan group of 35 House members from California, led by Rep. Doris Matsui, D-Sacramento, wrote the Corps to demand revisions. Rep. John Garamendi, D-Walnut Grove, said he is considering legislation that would exempt the entire state from the Corps policy.

"The national policy makes no sense in California," Garamendi said. "First is the expense of having to comply. Secondly, the levee districts are put in an impossible situation of having to destroy habitat."

The Corps will plant trees at 83 sites on 5.6 miles of riverbank from Tehama to Lathrop. Many are in Garamendi's own neighborhood in the Sacramento-San Joaquin Delta, including sites near Walnut Grove, Clarksburg and Hood.

The variance allows two kinds of planting. On about half the sites, the Corps is allowing only shrub-sized willow species. This applies to locations where the levee is so narrow that there is no flat ground for planting.

In such cases, shrubs will be planted on the levee slope at the water's edge, also called the "toe" of the levee. Even these must be chopped off when the trunks grow to between 2 and 4 inches in diameter.

On the other half of the sites, full-size willow trees will be allowed because there is flat ground available away from the toe.

Corps officials say the intent is to keep large roots out of the levee structure itself, also called the "prism," to prevent roots from compromising the levee.

"Basically, we wanted to create shaded riverine habitat with the least amount of impact to the levee prism as possible," said Paige Caldwell, chief of readiness at the Army Corps Sacramento District.

The agency's own research provides little justification for these limits and, in fact, contradicts it. A team of researchers at the Corps concluded in a study last year that trees planted at the toe actually increase levee safety because roots offer a reinforcing effect.

The Corps aims to do the planting between December and March. It will hire a contractor, and does not yet have a cost estimate.

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Call The Bee's Matt Weiser, (916) 321-1264.

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