



SAN JOAQUIN COUNTY
**FLOOD CONTROL & WATER
CONSERVATION DISTRICT**

P. O. BOX 1810

1810 EAST HAZELTON AVENUE
STOCKTON, CALIFORNIA 95201
TELEPHONE (209) 468-3000
FAX NO. (209) 468-2999

THOMAS R. FLINN
DIRECTOR OF PUBLIC WORKS
FLOOD CONTROL ENGINEER

April 23, 2010

U.S. Army Corps of Engineers
Attention: CECW-CE, Mr. Douglas J. Wade
441 G Street, NW
Washington, D.C. 20314-1000

SUBJECT: COMMENTS ON PROCESS FOR REQUESTING A VARIANCE FROM VEGETATION
STANDARDS FOR LEVEES AND FLOODWALLS DOCKET NO. COE-2010-0007,
75 FEDERAL REGISTER 6364-68 (FEBRUARY 9, 2010)

Dear Mr. Wade:

Thank you for the opportunity to comment on the U.S. Army Corps of Engineers (USACE) *Process for Requesting a Variance from Vegetation Standards for Levees and Floodwalls*, as noticed in 75 Federal Register 6364-68, February 9, 2010. The San Joaquin Flood Control and Water Conservation District (District) endorses the concerns raised in the joint letter signed by the California Department of Water Resources and the Department of Fish and Game dated April 15, 2010 (Attachment 1). The District also supports the comments noted in the California Central Valley Flood Control Association letter dated April 19, 2010 (Attachment 2). The bottom line is that the District is very concerned about the proposed changes to the variance process, its implications, and the future of levees in the Public Law (PL) 84-99 program. Below is a summary of the District's specific concerns for your consideration.

1. *The proposed variance process does not adequately address "legacy" vegetation issues.* Local and State agencies with responsibility for levee maintenance in areas with extensive existing woody vegetation, particularly California's Central Valley, prefer a variance process that identifies dangerous vegetation for removal but allows benign or beneficial vegetation to remain.
2. *USACE should distinguish between existing levee systems and new Federal project improvements.* While the District accepts the concept that new levees should be constructed and maintained in compliance with the Engineering Technical Letter (ETL) 1110-2-571, a more integrated approach is needed for existing levees. In the District's opinion, USACE is not adequately considering the potential public safety impacts of clear cutting established vegetation on levees.
3. *The proposed variance policy runs counter to California's Central Valley Flood System Improvement Framework (Framework).* The Framework represents a significant collaborative effort between Federal, State, and local agencies. The District strongly supports using the agreed to Framework as the basis for determining how to appropriately address vegetation issues.
4. *The proposed variance process threatens PL 84-99 program eligibility.* This is contrary to what was agreed to between the State of California and the USACE in February 2009. Request that USACE allow levees to remain active in the PL 84-99 program so long as the State demonstrates measurable progress in meeting the Framework milestones.

5. *The new USACE vegetation variance process should take into consideration the requirements of other, State and Federal resource agencies.* Unfortunately, the proposed process will force local agencies into non-compliance with other environmental mandates. Local maintaining agencies cannot remove existing vegetation without incurring Endangered Species Act, National Environmental Protection Act, California Endangered Species Act and California Environmental Quality Act penalties. Consequently, those local agencies that comply with one regulation would be out of compliance with another regulation.
6. *The prohibition of woody vegetation on levees should be based on sound scientific findings.* The proposed prohibition of variances involving woody vegetation on levees does not seem to acknowledge that there is anecdotal evidence that vegetation on levees may be beneficial. The District is aware of two research efforts: a USACE led vegetation research program and a parallel State effort referred to as the California Levee Vegetation Research Program. Both research projects are part of the Framework effort described above. The District believes that these research efforts should be completed before any decisions are made to remove woody vegetation from existing levees.
7. *The funding required to prepare and submit variance requests is beyond the capability of many local agencies.* While the Federal Register indicates that there is a source of funding for Federal agencies to comply with the new variance process, it does not identify or acknowledge the significant financial burden that will be placed on local agencies to prepare and submit application packages. Adequate Federal funding should be identified to help local agencies process "legacy" vegetation variance requests.
8. *This new process will unduly and unfairly shift the burden of implementation to State and local agencies.* The District believes there is a legal necessity for the USACE to initiate a National Environmental Protection Act of 1969/California Environmental Quality Act (of 1970) analysis to explore the full impacts of the ETL and vegetation variance process, and that the USACE should share in the financial burdens involved in implementing their policy.
9. *The Federal government should share the financial burdens involved in implementing this new policy.* Local agencies will need to provide environmental mitigation for trees and vegetation removed in order to comply with the USACE ETL. Once again, local agencies lack a source of funding for mitigation activities that are required as a function of complying with this new policy.
10. *This new process will impair public safety by diverting funding away from solving other more critical risk factors, leaving the levees with little improvement in safety.* While there is substantial and well-accepted evidence of the severity of underseepage, erosion, through-seepage, channel capacity, levee stability, and other risk factors, the District is not aware of any levee failures in California that have been caused by woody vegetation on levees.
11. *The September 30, 2010 deadline for submittal of applications is unreasonable.* This provides insufficient time for local agencies to prepare the required application packages that will include extensive environmental documentation. A more reasonable time frame must be given if local agencies are to comply with the new guidance – perhaps three to five years.

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A VARIANCE FROM VEGETATION STANDARDS
FOR LEVEES AND FLOODWALLS

Should you have any questions, please contact Mr. Sam Sharideh, Engineer III, at (209) 468-3605, or by email at ssharideh@sjgov.org, or the undersigned at (209) 953-7617, or by email at mconnelly@sjgov.org.

Sincerely,



MARK W. CONNELLY
Engineering Services Manager

TRF:SC:rc
FM-10D045-R1

Attachments 1. CA DWR and CA DFG Letter April 15, 2010
2. CCVFCA Letter April 19, 2010

- c: Brigadier General Rock Donahue
Commander, South Pacific Division
U.S. Army Corps of Engineers
- Colonel Thomas Chapman
District Engineer, Sacramento District
U.S. Army Corps of Engineers
- Honorable Lester A. Snow, Secretary
California Natural Resources Agency
- Mark Cowin, Director
California Dept of Water Resources
- Benjamin Carter, President
Central Valley Flood Protection Board
- Ms. Melina Terry, Executive Director
CA Central Valley Flood Control Assoc
- Ms. Susan Gilson, Executive Director
National Association of Flood and
Stormwater Management Agencies
- San Joaquin County Advisory
Water Commission
- San Joaquin County Flood Protection
Technical Advisory Committee