



April 22, 2010

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

Subject: ***Docket No. COE-2010-0007***
Variance from vegetation standards for levees and floodwalls

Dear Mr. Wade,

Thank you for the opportunity to comment on the update to the process for requesting a variance from vegetation standards for levees and floodwalls.

Zone 7 of the Alameda County Flood Control and Water Conservation District (Zone 7) supplies treated drinking water to retailers serving nearly 200,000 people in the Livermore-Amador Valley, including the cities of Pleasanton, Livermore, and Dublin. Zone 7 also manages the storm-water flows into the Livermore-Amador Valley area within the major drainage ways of the Valley floor. Of the 120 miles of drainage ways within the Valley, Zone 7 owns and maintains approximately 39 miles of both improved and unimproved channels (flood control works, not levees).

In order to meet our mission to provide a reliable supply of high quality water and an effective flood control system for the Livermore-Amador Valley in a fiscally responsible, innovative, proactive and environmentally sensitive manner, our Stream Management Master Plan (SMMP) addresses the challenges of balancing flood protection with water supply, water quality, habitat and environment, and recreation and trails objectives for the Valley. As such, the SMMP is a multi-benefit program that is developed to fulfill stream management goals and objectives of Zone 7 and other local and regional agencies and stakeholders.

Zone 7 also participates in regional efforts to restore Steelhead habitat. We are a funding partner of the 17-member Alameda Creek Fisheries Restoration Workgroup, and are one of many Bay Area agencies who are signatory to the Statements of Understanding with National Marine Fisheries Service to proactively support and engage with them in their preparation of a Multi-Species Recovery Plan for the Central California Coast.

Since 2005, Zone 7 has been on the Steering Committee developing a long-term Sacramento-San Joaquin Bay Delta Conservation Plan (BDCP) with the co-equal goals of ecosystem improvements and water supply reliability. The purpose of the conservation planning process is to develop a means to comply with the Federal & State Endangered Species Acts (FESA and CESA), and to potentially conserve and recover certain species whose natural habitats may be impacted by water and power facilities and activities. The San Francisco Bay-Sacramento San

Joaquin River Delta is the largest estuary on the West Coast, and is home to almost 600 different species of fish, animals, birds and plants, plus more than 130 invasive, non-native species of concern. It is also the principal water supply for more than 23 million people, including approximately 3 million in the Bay Area.

The efforts noted above illustrate some of the projects that will be impacted by the USACE proposed guidance.

In addition, Zone 7 is a member of the Bay Area Flood Protection Agencies Association (BAFPAA) and of the Bay Area Watershed Network (BAWN), and we support their comments submitted under separate cover. Further, Zone 7 offers the following comments on the proposed policy:

- The published guidance should include a clear definition of what constitutes a levee. The proposed vegetation-free zone should not apply to in-ground channels or to portions of stream banks/levee systems that are below the elevations of areas adjacent to the levee system.
- To comply with the National Environmental Policy Act, the potential impacts of the Corps' proposed actions should be considered in an Environmental Impact Statement. The USACE should also consult with the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) on the proposed vegetation variance process since any vegetation guidelines impact riparian habitats and potentially impact threatened and endangered species.
- Implementation and enforcement of the strict vegetation guidance in ETL 1110-2-571 and the proposed variance process appear to conflict with a fundamental principle of environmental stewardship, as the standards prohibits vegetation from most of the cross-section of a levee and adjacent areas. The canopy provided by such riparian forests can be critical in maintaining habitat temperatures necessary for the survival of fisheries.
- The proposed guidelines will be in conflict with California's Porter-Cologne Water Quality Control Act. This will also set Corps policy in conflict with Section 404 of the Clean Water Act, because the State's standards will not allow 401 Water Quality certifications for clear cutting of riparian forests on levees.
- Because the requirements included in the proposed vegetation variance are in direct conflict with other state and federal requirements, such as the Clean Water Act, Federal and State Endangered Species Acts, etc., local flood control districts will likely not be able to obtain all of the environmental compliance documents necessary to comply with the vegetation variance standards.
- Any proposed variance guidelines should not be implemented until research work being performed at the Corps' Engineer Research and Development Center is complete and it is better defined which vegetation should be removed and which vegetation is beneficial or benign to levee safety and can remain.
- A "variance" program should be designed to accommodate meaningful variances that reflect differences in the hydrology in various parts of the country.

Douglas J. Wade, U.S. Army Corps of Engineers

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- If BAFPPAA member agencies are not able to comply with the proposed vegetation variance process, many levees in the San Francisco Bay Area and Northern California would no longer be eligible for participation in the Pubic Law 84-99 Program nor would they be in compliance with existing maintenance obligations with the USACE.
- Given the strict requirements for engineering and environmental analysis, including acquiring federal and state resources permits, it is extremely unlikely that local flood control districts will be able to submit variance requests to the Corps by September 30, 2010. Thus, the timing in the guidelines should be revised to be more realistic.

Thank you for the opportunity to comment on this important endeavor. If you have any questions or comments, please feel free to contact either me or Elke Rank at 925-454-5000.

Sincerely,



G.F. Duerig
General Manager

cc: Michael D. Thompson (BAFPAA)
Kurt Arends
Joe Seto
Elke Rank