



FRIENDS OF THE RIVER

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Comments on Docket Number COE-2010-0007 — Process for Requesting a Variance from Vegetation Standards for Levees and Floodwalls.

Friends of the River was a participant in “ ‘The Vegetation Challenge’: A scientific and engineering examination of managing vegetation along California’s Central Valley levees that protect urban and rural areas from devastating floods” Symposium and has followed the development of the California Levees Roundtable and the California Levee Vegetation Research Program. The Corps of Engineers, along with many Federal, State, and local agencies has been a participant in these programs.

These agencies have participated because the California’s project and non-project levee systems have straightjacketed the state’s rivers and riverine habitat in highly confining levee systems. This “legacy” system means that the Corps’ proposed action is an action to clearcut significant portions of the state’s remaining lowland riverine forests. These levees are exposed to significant erosive forces and by happenstance and design are often protected and held together by the thin line of riparian forest at issue in the proposed revisions to the variance policy.

The proposed action by the Corps of Engineers under this docket number is in wild variance with the assessments, assumptions, conclusions, and mutual commitments of these processes.

The proposed action revises procedures for requesting a variance, effectively rescinds existing variances, and creates a process that makes it effectively impossible for variances of “legacy” systems to be reissued. The proposed action then purports to saddle the non-Federal parties with the responsibilities for environmental review and Endangered Species Act compliance to comply with the Corps’ revised variance policy, participate in the Rehabilitation and Inspection Program (P.L. 84-99), and binding commitments between the Corps and maintaining agencies.

Such spectacular blindness to the effect of its actions is equally inconsistent with both the Corps’ public safety and environmental stewardship missions — as well as Federal law.

Rigging the Outcome of the Variance Program: Unless a variance from the clear-cut policy is sought, all existing variances expire 30 September 2010, less than seven months from now. But can new variances actually be successfully sought? The sponsor/operating maintaining agency is responsible for providing all National Environment Policy Act (NEPA), Endangered Species Act (ESA) consultation documentation required to analyze the request, and the Corps is more than aware of the profound environmental consequences of the contemplated actions. Variances “may not be approved for vegetation that adversely affects the safety, structural integrity and function of levees.” However, the “the burden of proof falls upon the requester” in a field of science where the “impacts of vegetation on levee systems is limited worldwide.”¹ In order for the application to be complete, the requester must also disclose the extent of the root systems of species at maturity proposed to be found on or near the levee.² The Corps already has established that such information is essentially unavailable and is hoping to launch a research program to understand the species and conditions of root systems near and within levees. Development of reliable information is likely to take years or decades. Thus the Corps’ program is clearly being established to result in the end of vegetation variances and pressure sponsoring agencies to begin wholesale riparian clearcutting.

California Levee Roundtable: In California, a regional roundtable with Corps of Engineers participation has been underway for several years. The considerable complexity of this issue has been acknowledged and documented. Participants have reached a number of conclusions on how to deal with the widespread existence of levee and river systems in the state that are not designed consistent with the Corps’ national “frame” of what a typical leveed river system looks like: a river, wide forested berms between river banks and levees, then grass-covered levees. In much of California, the levees are indistinguishable from the river banks and grass does not grow for much of the year in a Mediterranean climate.

The proposed action seems unaware of the Roundtable’s work, discussions, judgements, or purpose.³ Indeed it is difficult to understand the proposed action as anything but an abandonment of the Roundtable and decision by the Corps to move the riparian clearcutting program for California forward.

¹ Questions and Answers, Policy Guidance Letter-Variance from Vegetation Standards for Levees and Floodwalls, February 11, 2010, ACE.

² Federal Register, Vol. 75, No. 26, Department of Defense, Department of the Army, Corps of Engineers, Process of Requesting a Variance from Vegetation Standards from Levees and Floodwalls, §7(c)(1), February 10, 2006.

³ California’s Central Valley Flood System Improvement Framework, California Levees Roundtable (Central Valley Flood Protection Board, Department of Water Resources, Federal Emergency Management Agency, U.S. Army Corps of Engineers, Sacramento Area Flood Control Agency, U.S. Fish & Wildlife Service, NOAA Fisheries, Reclamation District 2068, California Department of Fish and Game), February 27, 2009.

Misplaced Environmental Compliance Action: The proposed action invalidates all existing vegetation variances, agreements, or other deviations. Any requests for new variances must comply with the rules in the proposed action. The sponsor is responsible for all NEPA and ESA compliance.⁴ The act of invalidating all existing vegetation variances, agreements, or other deviations is clearly a Corps of Engineers action. Actions by others to comply with the proposed updated variance procedure — particularly when they have binding agreements with the Corps to undertake vegetation management programs consistent with Corps direction — are an expected consequence of the proposed action.⁵ Since important natural and public-safety consequences are widely acknowledged and the Corps bears responsibility for the impacts of its programmatic actions, the current 4-page Finding of No Significant Impact (FONSI) is inappropriate. The Corps should conduct an environmental review of the consequences of invalidating existing waivers.

This letter is by necessity brief. We request that the Corps of Engineers extend the comment deadline to benefit from more extensive input into this important issue.

Sincerely,



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⁴ Sections 1, 10, and 11, Supra, Federal Register Notice.

⁵ “Due to the unique history of the flood control system in the California Central Valley, levee slopes often contain brush and trees that are the last remnants of a vast riparian forest which once extended across the valley floor adjacent to the Sacramento and San Joaquin rivers. Much of this vegetation provides important environmental, recreational, and cultural benefits that would be impacted by the stricter enforcement of Corps regulations.” Media Communiqué, California Levee Vegetation Policy: Next Steps 21 September 2007, Corps of Engineers, et.al.