



RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

April 17, 2012

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

Dear Ms. Conforti:

Re: Docket ID COE-2010-0007
Process for Requesting a Variance
from Vegetation Standards for Levees
and Floodwalls

The Riverside County Flood Control and Water Conservation District appreciates the opportunity to comment on the February 17, 2012 proposed United States Army Corps of Engineers' Policy Guidance Letter (PGL) Process for Requesting a Variance from Vegetation Standards for Levees and Floodwalls.

The District is very familiar with the issues inherent in implementation of the proposed Guidance. As General Manager-Chief Engineer I have been making presentations throughout the country to highlight how levees here and throughout the arid Southwest cannot be treated the same as levees elsewhere in the U.S. The comments made below essentially reiterate comments made to the Corps after the previous solicitation of public comments in 2010. But we also have tried to address the responses to comments that the Corps made in 2011.

Local Hydrologic Setting

Riverside County encompasses more than 7,300 square miles with a population of over 2.2 million people. We are located in the arid Southwest with a climate that varies from a low-elevation arid desert to a more Mediterranean type climate in the inland valleys. Annual rainfall totals range from six inches in the Palm Springs area to 16 inches in southwestern part of the County. Precipitation is usually episodic, with only a few storms each year that yield flow for only a matter of hours to a few days. Consequently, tributaries and other waters in Riverside County are intermittent streams in wet years and become ephemeral or have long periods of no-flow in normal or below average rainfall seasons.

Local Levee Infrastructure

The District is the regional flood management authority for the western part of Riverside County. We own and operate just over 30 miles of levees. About 11 of those miles of levees were constructed by the Corps and the District operates them guided by the Corps-approved operation manuals.

Comments on the Draft Guidance

1. **Regional Variances are not being proposed as required in WRDA** – The PGL states "Regional variances or variances that cover all levees within a geographical area will not be issued." The Corps apparently believes that both environmental and levee safety issues are site-specific in nature and benefit from a focused approach. While this approach makes sense in many areas, it is not necessarily true in all cases.

The arid Southwest, for example, is prime area where a regional variance would make sense. The peaky nature of storm hydrographs typical of the region substantially lower the risk of levee failure due to seepage caused by root systems. What is more, the levels of rainfall are such that it is difficult for vegetation that would disturb flood-fighting operations to flourish. An approach that recognizes this regional characteristic is very much in line with the direction found in WRDA and we recommend the Corps follow the law and allow for regional variances where they make sense.

2. **The variance review process is unduly bureaucratic and time-consuming** – The proposal that a levee variance request would require an endorsement by the Corps District Commander and District Levee Safety Officer, MSC Commander and MSC Levee Safety Officer, and the HQ Levee Safety Officer is unnecessarily bureaucratic. The value added by each subsequent level of review does not warrant the time and resources needed to accomplish it. The Corps should entrust their District commanders with final approval of most variance requests.

Also, the review of variance applications needs to be performed in a timely manner. The PGL, however, proposes no firm time limits for any of the reviews - even the 90-day review for the Agency Technical Review can be circumvented if there are "special circumstances". The Corps needs to impose defined review time-frames for all steps in the process.

3. **Costs will be much greater with a variance process** - It is undeniable that preparing the engineering reports and environmental studies required to complete variance applications is a costly burden. The question then becomes, is it warranted?

The Corps' response that early screening will help weed out unpromising applications does not change the fact that sponsors that are deemed worthy to continue will still have to produce expensive and time-consuming reports and studies. Moreover, the requirement for variances on projects designed to have vegetation is simply adding cost and time for no reason other than an administrative desire for completeness. The Corps needs to rethink how a variance process is applied.

4. **Support Technical Vegetation Requirements** - The Corps' working assumptions are: 1) woody vegetation introduces additional uncertainty about levee system performance; and 2) vegetation can hamper the ability to flood fight, inspect, and maintain levee systems. The Corps claims its policy is based on experience and field observations but provides no support for its contentions about levee performance.

In a preliminary review of levee performance records, California's Department of Water Resources has found that of 329 documented levee failures in the Central Valley, none could be attributed to levee vegetation. It appears the importance the Corps gives to this aspect of levee operation and maintenance is simply out of proportion to the evidence that it is a critical performance problem.

While we agree that flood fighting is a critical element in levee safety, it seems that keeping vegetation off the crown is what is important to allow access, inspection and sandbagging. The vegetation restrictions along the levee slopes and toe are less important for this. In fact, as the study by Corcoran, et. al., makes clear, trees along the toe of the levee would increase the levee stability factor of safety. This leads one to believe that vegetation on levees is not always a threat to public safety.

5. **The Corps' vegetation policy leaves the levee sponsors in a no-win situation** – Public safety is assumed to trump all other concerns, but the link between levee vegetation and public safety is not established. This leads to the unfortunate result of the PGL presenting the sponsors with a false either/or choice between public safety and environmental stewardship. Moreover, the observation that participation in the 84-99 program is voluntary is another untenable "choice". Repair of levees after a disaster is not something most sponsors can afford by themselves.

We urge the Corps not to take a hardline based on unsupported assumptions. We believe a variance can be developed that would achieve all three goals: public safety, environmental stewardship and federal participation in levee repair through the 84-99 program.

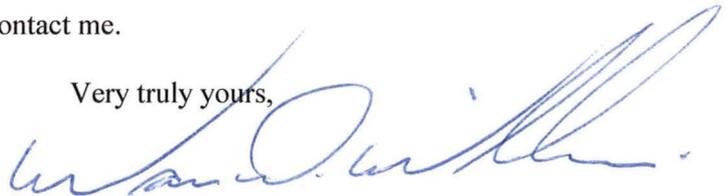
6. **The variance policy should include an appeals process** – In their 2011 response the Corps says the intent is to address any conflicts in a collaborative, informal manner during the process itself. This is a laudable approach, but it would be more pragmatic if there was an administrative appeal process so that the Corps would only have to defend itself against lawsuits after the prospective plaintiff had exhausted all administrative remedies.
7. **Extend the time allowed to submit new scientific studies** – The PGL indicates that new science will be considered in variance requests and the Corps should be commended for this. However, the time frame of two years seems too short to finish a peer-reviewed scientific study. The time period should be extended.

Conclusion

The District does not support the variance policy as proposed. A policy that addresses the comments above would be more practical, sensible, efficient and economical and would not compromise public safety. More importantly, a variance that must be used on nearly every levee in the country is not really a variance, it is a *de facto* policy. We believe the Corps should rethink the entire levee vegetation policy and issue a new technical memorandum to replace Engineer Technical Letter (ETL) 1110-2-571-"Guidelines for Landscape Planting and Vegetation Management at Levees, Floodwalls, Embankment Dams, and Appurtenant Structures".

Should you have any questions please feel free to contact me.

Very truly yours,



WARREN D. WILLIAMS
General Manager-Chief Engineer

c: CEAC
Attn: Karen Keene
NAFSMA
Attn: Susan Gilson

SEM:DW:mcv
P8\146030