

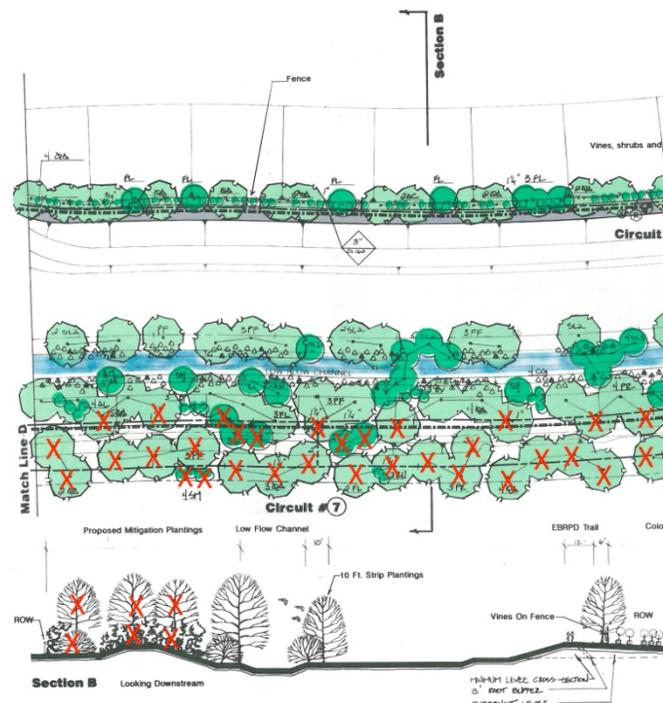
Briefing Paper for Congress on the Impact of Corps of Engineers Vegetation Policies to Levee Owners in California September 2010

Background

The US Army Corps of Engineers (Corps) has constructed over 15,000 miles of levees in the US, and about 3,000 miles are within California. Local agencies such as a State, County, City, Reclamation District, or Flood Control District, own and maintain these facilities through an agreement with the Corps. The Corps provides levee safety criteria, inspections, monitoring, rehabilitation funding, and disaster assistance. The Corps has recently published policies which will require local agencies to decide between removing the vegetation from their levees in violation of environmental laws, or not removing the vegetation and becoming ineligible for Corps disaster assistance.

Congress directed the Corps in the 1996 Water Resources Development Act (WRDA) to develop vegetation policy guidelines utilizing a collaborative process with all Federal, State, and local stakeholders, to include the varied interests in providing flood control and preserving, protecting, and enhancing natural resources. The guidelines were to provide a coherent and coordinated policy that addresses regional variations in levee management and resource needs. The most recent Corps guideline dated April 10, 2009 (ETL 1110-2-571) requires that levees be free of trees and shrubs, but states "It is intended as a guide for safe design and not as a restriction to the initiative of designers. These guidelines should be used with reasonable judgment and practicality, tailored to the specific requirements and conditions of each individual project."

On February 9, 2010, the Corps published a notice asking for comments to a new "Process for Requesting a Variance from Vegetation Standards for Levees and Floodwalls" which essentially requires all existing levee/floodwall owners with facilities not in compliance with the 2009 ETL guideline to apply for a variance. The variance guideline states that only a minor deviation from the 2009 ETL will be allowed, and Corps staff states that without an approved variance, the levee facility will be given an unacceptable rating, will no longer be eligible for disaster assistance funding, and the community will be remapped into the floodplain by FEMA. This applies to new and existing Federal project levees, and the required removal of riparian vegetation will have major impacts to rivers all over the nation, especially in California. When attempting to implement the vegetation or variance guidelines, the local agency will be prevented from proceeding by resources agencies citing Federal and



*Mitigation Landscaping Plan - Wildcat Creek
50% of riparian vegetation planted to be removed*

State laws which protect the riparian habitat and species, and local agency directors could face fines or jail time.

WRDA 2007 created the National Levee Safety Program, however there has been no new WRDA guidance on vegetation since 1996. The Corps, in attempting to implement the 1996 WRDA, has now placed local agencies in an untenable situation, caught between Corps requirements and environmental laws. Interagency studies and working groups, such as the California Levees Roundtable, are currently addressing the impacts of vegetation to levee safety, but these have been bypassed by the Corp's policy. Also, implementation of this policy has been assigned to Corps headquarters, not allowing for inclusion of regional climate, habitat, and community issues.

Requested Action

- Include language in WRDA 2010 directing the Corps to develop levee maintenance protocols which account for regional differences, project authorities, and stakeholder involvement (per 1996 WRDA 202 (g) language)
- Direct the Corps to delay crafting vegetation guidance until adequate scientific research has been completed and accepted
- Require that future levee safety guidelines include all potential levee failure mechanisms not just vegetation, be based on actual levees (not the ideal levee), and address engineering design criteria, environmental benefits, and community benefits. The guidelines should be based on a risk and uncertainty approach, not a single-objective criteria.
- Direct the Corps to allow exemptions or variances where vegetation was included in the Federal project
- Direct the Corps to prepare full NEPA EIS for the impacts of the new policies
- Provide funding to Corps/State/local agencies to certify levees, apply for variances, and implement projects to bring the levees up to new standards
- Direct the Corps to use a realistic implementation schedule of 20 years to bring levees up to new standards
- Allow Corps District offices to approve variances
- Request assistance from Nancy Sutley (Council on Environmental Quality)
- Send a joint congressional letter to Jo-Ellen Darcy, Assistant Secretary of the Army