



CENTRAL DELTA WATER AGENCY

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December 7, 1999

Ms. Mary Nichols, Secretary
The Resources Agency of California
1416 Ninth Street
Sacramento, CA 95814

Ms. Patricia J. Beneke
Assistant Secretary - Water and Science
Department of Interior
1849 C Street N.W.
Washington, DC 20240-0001

**RE: U.S. Army Corps of Engineers' Authority
to Expend Funds on Non-Project Levees in
the Sacramento-San Joaquin Delta**

Dear Secretary Nichols and Secretary Beneke:

The U.S. Army Corps of Engineers has been investigating, in fits and starts, involvement in the ongoing maintenance of non-project levees in the Delta for at least 50 years. To the best the of the undersigned's knowledge, in spite of numerous reports, Congress has, up until recently, never specifically authorized the Corps to participate in non-project levee maintenance programs in the Sacramento-San Joaquin Delta.

Public Law 106-60, passed on September 29, 1999, contained the following language:

**"CALIFORNIA BAY-DELTA RESTORATION
(INCLUDING TRANSFER OF FUNDS)**

For necessary expenses of the Department of the Interior and other participating Federal agencies in carrying out ecosystem restoration activities pursuant to the California Bay-Delta Environmental Enhancement Act and other activities that are in accord with the CALFED Bay-Delta Program, including projects to improve water use efficiency, water quality, groundwater and

surface storage, levees, conveyance, and watershed management, consistent with plans to be approved by the Secretary of the Interior, in consultation with such Federal agencies, \$60,000,000, to remain available until expended, of which \$30,000,000 shall be used for ecosystem restoration activities and \$30,000,000 shall be used for such other activities, and of which such amounts as may be necessary to conform with such plans shall be transferred to appropriate accounts of such Federal agencies...." (Emphasis added).

Although the current study being conducted by the Corps of Engineers is incomplete, the Corps within the last two years made application to the CALFED Program for authority to expend \$2 million to repair the Prospect Island levee in anticipation of subsequent funding of a Corps habitat project within Prospect Island (which would include the subsequent breach of the levees to be repaired with the CALFED funding). Although the Ecosystem Roundtable failed to recommend the expenditure of \$2 million of funds earmarked for early implementation for the Ecosystem Restoration Plan, the CALFED Policy Group approved the Corps' application and the money was allocated to the Corps and spent for repair of the Prospect Island levee and associated construction.

Subsequent events, however, have prevented the Corps from proceeding with the construction of the habitat project on Prospect Island. Two conclusions can be drawn from this:

1. The Corps feels it has authority to expend CALFED funds on non-project levees in the Sacramento-San Joaquin Delta area where such action is in support of an ecosystem restoration project. This conclusion would be supported by the subsequent passage of Public Law 106-60 under the language quoted above; and

2. Funds earmarked by CALFED for early implementation of the Ecosystem Restoration Plan have been expended by the Corps on a levee project (Prospect Island) which has not resulted in early implementation of an Ecosystem Restoration Plan project. With this background, it seems clear that the Corps currently has

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the authority to expend funds on non-project levees in the Delta. It seems appropriate that CALFED do one of the following:

(a) Identify a non-project levee project within the Sacramento-San Joaquin Delta as to which funds authorized under Public Law 106-60 could be expended. This project could be a multiple benefit project with flood control, ecosystem restoration, and/or water supply and quality purposes,

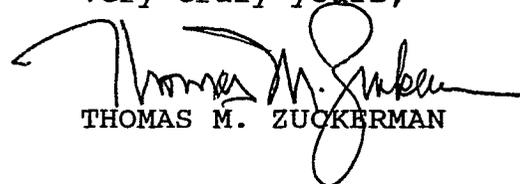
(b) Contribute to the Delta Levee Maintenance Program (AB 360) in support of the ongoing local-state multi-benefit levee maintenance and rehabilitation program, or

(c) Reimburse the \$2 million previously authorized by CALFED for the Prospect Island levee in order that such funds would be available to augment the funds which CALFED has available for expenditure for early implementation for the Ecosystem Restoration Plan.

These concepts have been discussed at recent meetings of the Ecosystem Roundtable, the Levees and Channels Technical Work Group, and the Delta Levees and Habitat Advisory Committee with the general concurrence of those members present. I also discussed this subject during the public comment period at the most recent CALFED Policy Group meeting on November 17, 1999.

The Central Delta Water Agency would appreciate your consideration of these recommendations and being advised of your intended action in this regard.

Very truly yours,



THOMAS M. ZUCKERMAN

TMZ:csf

cc: Dante J. Nomellini
Margit Aramburu (for distribution to Delta Levees & Habitat
Advisory Committee members)
Wendy Halverson (for distribution to Ecosystem Roundtable
members)
Rob Cooke (for distribution to Levee & Channel
(Technical Team))