

**CALENDAR ITEM
C100**

A Federal

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**CONSIDER SUPPORTING FEDERAL LEGISLATION THAT WOULD ENACT THE
LEVEE VEGETATION REVIEW ACT OF 2012, WHICH WOULD REQUIRE THE
UNITED STATES ARMY CORPS OF ENGINEERS TO ADOPT A REGIONAL
VARIANCE POLICY FOR VEGETATION ON LEVEES**

INTRODUCTION:

State Lands Commission staff has been reviewing various legislative proposals introduced in the 112th Congress that involve lands under the Commission's jurisdiction. This report describes the proposed Levee Vegetation Review Act of 2012 (House Bill 5831 – Matsui) and proposes a Resolution for the Commission to consider adopting in support of this bill.

LEGISLATIVE PROPOSAL:

House Bill 5831 (Matsui): The Levee Vegetation Review Act of 2012

SUMMARY AND BILL DESCRIPTION:

House Bill 5831 would require the United States Army Corps of Engineers (Corps) to adopt a regional variance policy for vegetation on levees, instead of the Corps' uniform national policy. The bill would require the Secretary of the Army, in consultation with interested federal agencies, state and local governments, tribes, nongovernmental organizations and the public, to undertake a comprehensive review of the Corps' policy guidelines on vegetation management for levees. In conducting the review, the Secretary would be required to study the guidelines in view of: 1) the varied interests and responsibilities in managing flood risks, including the need to provide the greatest levee safety benefit with limited resources; 2) preserving, protecting, and enhancing natural resources, including the potential benefit that vegetation on levees can have in providing habitat for species of concern; 3) protecting the rights of Native Americans pursuant to treaties and statutes; and, 4) any other factors the Secretary considers appropriate.

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In conducting the review, the Secretary would also be required to consider factors that promote and allow for variances from the national guidelines on a regional or watershed basis, including soil conditions, hydrologic factors, levee performance history, vegetation patterns and characteristics, and environmental resources. Corps Regional Integration Teams would be required to recommend to the Chief of Engineers vegetation management policies for levees that are consistent with state and federal laws.

As part of the review, the Secretary would be required to solicit and consider the views of the National Academy of Engineering, which must be made publicly available and included in supporting materials issued in connection with the revised guidelines authorized by this bill.

The Secretary would be authorized to revise the Corps' levee management guidelines two years after the date of enactment of this bill, consistent with the results of the review. The revised guidelines would be required to provide a practical process for approving regional or watershed variances from the national guidelines, reflecting consideration of measures to maximize public safety, regional climatic variations, environmental quality, implementation challenges, and allocation of responsibilities.

BACKGROUND:

California's Central Valley Flood Control System includes approximately 1,600 miles of levees, with trees, brush and other woody vegetation growing on most of them. Ever since the system was turned over the State to operate, vegetation has been encouraged, protected, or introduced by the Corps on many levees.

In the aftermath of Hurricane Katrina, the Corps undertook a review of their levee standards to improve public safety. As part of that process, they adopted a new vegetation management policy requiring the removal of all woody vegetation over 2 inches in diameter from levees throughout the nation; unless a special variance is approved. This policy was adopted even though an Interagency Performance Task Force Report concluded that the flooding in New Orleans from Hurricane Katrina was caused by engineering and construction failures of the levees. Woody vegetation was not cited as a cause of levee failure.

In April 2010, the California Department of Water Resources (DWR) and the California Department of Fish and Game (DFG) submitted comments on the process for requesting a variance from the Corps' vegetation standards for levees. The Departments noted that proposed requirements for a variance are so stringent and ambiguous that variances are unlikely to be issued. Further, their comments expressed the importance of coordinating public safety improvements with protection of the unique and irreplaceable fisheries and wildlife habitats associated with the Central Valley Flood Protection System. They further expressed their view that the Corps' policy will reduce public safety in California, result in extensive and unnecessary environmental and

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ecosystem destruction, and remove the Corps' responsibility to assist state and local levee maintenance agencies in ensuring the integrity of California's levee system.

Accordingly, DWR and DFG have requested that the Corps cease implementation of its new policy and instead collaborate with California representatives and interested stakeholders to develop and adopt a practical regional variance process consistent with the 2009 Central Valley Flood System Improvement Framework, with the following features:

- Provide a regional approach that addresses the unique setting and history of the Sacramento, San Joaquin, and Delta levee systems.
- Provide the opportunity to allow well-managed, woody vegetation on all levee slopes, as determined by the variance, and not foreclose vegetation options on all but the lower 1/3 waterside of levees.
- Provide clear guidance on the level of detail needed for a variance, how that detail will be evaluated, and an appeal procedure should the Corps and the local sponsor disagree on the outcome of the process.
- Initiate consultation under the Endangered Species Act and complete a National Environmental Policy Act analysis.

House Bill 5831 is consistent with DWR and DFG's approach and proposed solution. It also addresses concerns voiced by a wide range of stakeholders concerning application of the Corps' policy in California, including it having the unintended consequence of actually increasing flood risks and that it would be devastating to the salmon, steelhead and other species in the Central Valley listed under the State and Federal Endangered Species Acts.

OTHER PERTINENT INFORMATION:

Many of the federal levees in California that are subject to the Corps' levee maintenance policy are either on or adjacent to public trust lands under the jurisdiction of the Commission. According to DWR and DFG, the implementation of the Corps' vegetation removal policy will require the removal of dwindling riparian habitat, which will likely have a devastating effect on the species that depend on this unique habitat, including endangered species such as the Chinook salmon, Central Valley steelhead, Western yellow-billed cuckoo and the Swainson hawk – all public trust resources under the Commission's jurisdiction. The removal of vegetation also has the potential to severely limit, if not extinguish, the public's ability to access, use and enjoy the State's public trust lands.

House Bill 5831 is a bipartisan bill, cosponsored by 30 members of the California congressional delegation. It was introduced on May 11, 2012 and referred to the House Transportation and Infrastructure Committee. To date, no hearings have been set.

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RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

1. Adopt the Resolution in support of House Bill 5831 attached hereto as Exhibit A.

EXHIBIT A

RESOLUTION BY THE CALIFORNIA STATE LANDS COMMISSION SUPPORTING H.R. 5831, THE 'LEVEE VEGETATION REVIEW ACT OF 2012,' WHICH WOULD DIRECT THE SECRETARY OF THE ARMY TO UNDERTAKE A COMPREHENSIVE REVIEW OF THE U.S. ARMY CORPS OF ENGINEERS' POLICY GUIDELINES ON VEGETATION MANAGEMENT FOR LEVEES

WHEREAS, the California State Lands Commission serves the people of California by providing stewardship of the lands, waterways, and resources entrusted to its care through economic development, protection, preservation, and restoration; and,

WHEREAS, pursuant to the Public Trust Doctrine, tide and submerged lands, including lands underlying non-tidal navigable waterways are owned by the states and are held in trust for the benefit of the public, and these public trust lands are to be used to promote the public's interest in water dependent or water oriented activities including, but not limited to, water related commerce, navigation, fisheries, environmental preservation and water related recreation; and,

WHEREAS, the Public Trust Doctrine and California's Constitution establish the right of the public to access and use public trust lands, as well as establish the public's right to fish on public trust lands; and,

WHEREAS, through its management of public trust lands, the Commission has the duty to protect these lands and the living resources therein for the purposes of preserving and continuously assuring the public's ability to access, use, and enjoy public trust lands and the resources inhabiting these lands and waters; and,

WHEREAS, California's Central Valley Flood Control System includes approximately 1,600 miles of levees, many of which are located on or adjacent to state sovereign lands, with trees, brush and other woody vegetation growing on most of them; and,

WHEREAS, ever since the Central Valley Flood Control System was turned over the State to operate, vegetation has been encouraged, protected, or introduced by the U.S. Army Corps of Engineers on many levees, much of which was intended to preserve habitat while improving levee stability; and,

WHEREAS, in the aftermath of Hurricane Katrina, the U.S. Army Corps of Engineers undertook a review of their levee standards to improve public safety, and as part of that process, they adopted a new vegetation management policy requiring the removal of all woody vegetation over 2 inches in diameter from levees throughout the nation; unless a special variance is approved; and,

WHEREAS, over the past several years, the California Department of Fish and Game and the California Department of Water Resources, along with other interested parties, have had many discussions and exchanged many letters with the U.S. Army Corps of Engineers requesting that the Corps reconsider their vegetation removal policy and engage in a cooperative effort to address levee reliability issues; and,

WHEREAS, H.R. 5831, which is a bipartisan effort, would direct the Secretary of the Army to undertake a comprehensive review, in consultation with federal agencies, state and local governments, tribes, nongovernmental organizations and the public, of the U.S. Army Corps of Engineers' policy guidelines on vegetation management for levees; and,

WHEREAS, H.R. 5831 would require the U.S. Army Corps of Engineers to examine its vegetation policy and its impact on public safety, regional climatic variations, environmental quality, implementation challenges, use the best available science, and adapt levee policy towards the needs of local communities; and,

WHEREAS, H.R. 5831 would authorize the Secretary of the Army to revise the U.S. Army Corps of Engineers' levee management guidelines, consistent with the results of its comprehensive review, and the revised guidelines would be required to provide a practical process for approving regional or watershed variances from the Corps' guidelines, reflecting consideration of measures to maximize public safety, regional climatic variations, environmental quality, implementation challenges, and allocation of responsibilities; and,

WHEREAS, the Commission believes that the enactment of H.R. 5831 would considerably protect and enhance the public trust lands either on or adjacent to the federal levees in California that are subject to the U.S. Army Corps of Engineers' levee maintenance policy; now, therefore, be it

RESOLVED BY THE CALIFORNIA STATE LANDS COMMISSION that it supports H.R. 5831 (Matsui), the 'Levee Vegetation Review Act of 2012', that would require the Secretary of the Army to undertake a comprehensive review of the U.S. Army Corps of Engineers' policy guidelines on vegetation management for levees and would require the U.S. Army Corps of Engineers to move to regional variances with input from the state and local entities that are most familiar with the unique challenges facing each area; and be it further

RESOLVED, that the Commission's Executive Officer transmit copies of this resolution to the President and Vice President of the United States, to the Governor of California, to the Majority and Minority Leaders of the United States Senate, to the Speaker and Minority Leader of the United States House of Representatives, and to each Senator and Representative from California in the Congress of the United States.