August 20, 2008

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Subject: Comments on the draft California Water Plan Update 2009:
1. Flood Management Strategies
2. Flood Management Additions to Regional Reports

Dear Mr. Dabbs:

The following comments were developed jointly through the California State Association of Counties (CSAC) and the Flood Management Committee of the County Engineers Association of California (CEAC). CSAC represents the interests of the State's 58 counties before the California Legislature, administrative agencies and the federal government. CEAC, an affiliate of CSAC, is an association comprised of California county engineers, public works directors, county road commissioners and professional staff. CEAC's Flood Management Committee is comprised of directors and staff from county public works departments, and county flood control agencies and districts.

**Comments on the Flood Management Strategies**

*Integration of Flood Management Strategies*

CSAC and CEAC endorse integration of floodplain management, stream corridor restoration, and flood impact reduction with conventional strategies of reservoir storage and increasing channel capacity.

Such integration is suggested in the four strategies of the working draft. We suggest the four strategies be combined into an integrated strategy focused on supporting and expanding the capacity of county flood control agencies to identify flood risks, evaluate alternative means of addressing risks, conduct public planning processes, and implement comprehensive programs to reduce flood damages, including multi-objective capital projects and floodplain management.

Increasingly, our agencies must be capable in the gamut of flood protection techniques and strategies and must combine them to achieve flood adequate flood protection at any given location.

Consider the common example of an urban stream with older, deteriorating channelized reaches and inadequate capacity to carry a 1% flood. Dredging may be required but may not be regularly performed because environmental clearances are delayed. Floodplain storage should be increased, and opportunities may exist to obtain and restore floodplain lands, but the agency may lack funding and mechanisms to do so. Flood impact reductions—raising floor elevations, flood proofing, and enforcing standards for floodplain development—may be called for, but existing institutional arrangements between the flood control agency and local municipal planning and development review departments may limit the effectiveness of those efforts. Finally, replacement of the existing concrete channel infrastructure may not achieve public and regulatory acceptance unless the project is designed to preserve, restore, and enhance the geomorphic stability and habitat values of the stream.

In this example and similar circumstances, county flood control agencies may need to pursue any or all of the following: conduct a stakeholder-based planning process, identify consensus needs and priorities, develop a multi-objective in-channel project that integrates flood protection with habitat restoration, negotiate and fund the purchase of properties with repetitive damages, work with local municipalities to enhance

review of developments near streams, carry out public education campaigns, and identify new sources of funding for each of these initiatives.

In our view, the Water Plan Update strategy should reflect this present-day reality of flood protection practice and should seek to enhance the full range of resources needed by county flood control agencies.

*Challenges and Recommendations*

As stated in each of the four draft strategies, DWR is working to identify the costs of improving flood management on a statewide basis. That work will include identification of flood risks, proposals for feasible flood management improvements, and quantification of the cost of implementing the identified improvements.

As noted in the strategies, the bulk of the information will not be available for inclusion in the 2009 Water Plan update.

However, CSAC and CEAC believe that the 2009 Water Plan update should at least identify the major challenges which limit the effectiveness of county flood control agencies. Further, the 2009 update should incorporate recommendations to begin addressing those challenges. These challenges and recommendations include:

*Funding.* The Water Plan should discuss the limitations imposed on local flood control agencies by the 1996 Proposition 218 (and the 1978 Proposition 13 before it). As a result, many if not most flood control agencies lack personnel and other capacities to adequately identify flood risks and to plan and fund integrated projects and programs to address those risks. The 2009 Water Plan update discussion should include identification of potential funding sources and recommend legislative action needed to address funding. This should include reform of Proposition 218, and discussion of on-going funding for the state flood control subvention program. The Water Plan update discussion should also identify the need to assist local flood control agencies with contingency funding for evacuations and emergency repairs.

*Planning and Management.* The Water Plan should emphasize long-range planning as a flood management strategy. Long-range planning should cover identification and mapping of current and foreseeable flood risks, consideration of urban development patterns, preservation of floodplains and floodplain storage, evaluation of capital needs for future facilities, maintenance of existing facilities, replacement of aging infrastructure, and sources of funding. Long-range planning processes should also provide for stakeholder engagement and involvement. The 2009 Water Plan Update recommendations should consider ways to fund and create incentives for local planning. DWR should also find ways to tie Water Plan recommendations into the Integrated Regional Water Management Plans and ensure those plans—and associated capital grant programs—balance flood protection and stormwater management on a par with other aspects of water management.

*Liabilities Associated with Flood Management.* The 2009 Water Plan update should identify and discuss, as a separate strategy or issue, the liabilities associated with flood management and the State's ability to limit these liabilities. In the absence of a common standard (such as the "common enemy" standard) there is now a patchwork of legal decisions regarding what constitutes "reasonable" impacts on downstream drainage. Some of these decisions hold agencies liable for projects constructed 50 years previous. In addition, there is the potential for flood control agencies to incur legal liability for secondary impacts associated with flood management projects, such as impacts on groundwater supply or mosquito harborage. In the absence of legislative action, this state of affairs discourages agencies from constructing flood management projects.

*Floodplain Management.* The 2009 Water Plan Update should include a discussion of non-structural approaches to flood management and its applicability in different environments, including urban, suburban, rural, and agricultural land uses. In particular, the Water Plan Update should address implementation of the December 2002 recommendations of DWR's Floodplain Management Taskforce and initiatives such as the "No Adverse Impact" idea promoted by the Association of State Floodplain Managers. The update should discuss ways to balance the economic benefits of floodplain development against the costs associated with protecting floodplain properties from flood hazards.

*Federal and State Environmental Permitting.* The 2009 Water Plan Update should address the challenges county flood management agencies face in obtaining environmental permits to build and maintain projects. At present, state regulatory agencies lack staff and administrative capacity to ensure timely and consistent review of environmental permit applications. When permits are obtained, environmental mitigation and monitoring requirements may add 10-40% or more to cost of building and maintaining flood control facilities.

As we found in our interviews with county flood protection agency directors, most project budgets in county agency capital improvement programs do not include the costs of on-site or off-site environmental mitigation requirements, to address geomorphic stability or fish passage, or to incorporate multiple uses and benefits. The Water Plan Update should include recommendations to facilitate the state's environmental review process for flood protection projects. The Update should also identify the need to clarify what a "state of emergency" allows local agencies to do when addressing critical needs. In addition, the Update should identify ways DWR can assist local agencies to engage regulatory and public stakeholders to plan projects and obtain approvals for projects. Lastly, we would suggest the inclusion of "safe harbors" language for maintenance permits of integrated projects, such as constructed wetlands, water quality treatment projects, Low Impact Development (LID) solutions and floodplain avoidance.

**Comments on the Regional Reports**

The content of the Flood Management Strategies—including the strategies in the current draft and the modifications recommended above—should be brought forward into the Regional Reports. The "Challenges" and "Response Strategies" in the Regional Reports should consider and incorporate the broader range of challenges County flood control agencies face. Some examples are below.

*San Francisco Bay Area*

In the San Francisco Bay Area, local agencies face the challenge of controlling downcutting, bank erosion, and channel migration in streams that flow through urbanized areas. In many cases, the local flood management agency owns some but not all reaches of a stream, with the remainder private property. Some agencies, such as Marin County, are emphasizing biotechnical bank stabilization in agency-owned reaches while assisting private property owners to plan and permit bank stabilization projects that use similar techniques.

In many cases, flood facilities are not designed to convey the 1% flood, and it is not considered feasible to protect against the 1% flood due to unavailability of land, environmental restrictions, and the need to preserve historic and long-existing commercial areas.

Reducing flood risks on local creeks is often best accomplished by identifying and resolving specific localized problems or choke points, such as bridge abutments, culverts or other areas prone to sedimentation, growth of invasive such as *arundo donax*, beaver dams, or blockages caused by collapsing banks.

Some Bay Area communities have adopted new fees or taxes to fund flood protection projects despite the state's restrictions on local residents' choice. Examples include Measure B in Santa Clara County (2000), Measure A in Napa County (2004), and voter approval to fund Flood Zone 9 in Marin County's Ross Valley (2007). These measures fund a variety of watershed approaches to reduce flood risks and flood impacts, including capital projects.

The increasing emphasis on "smart growth"—urban redevelopment and infill—can exacerbate this problem as new developments are built close to creeks. However, with effective watershed-based land-use planning, increased urban density can be accommodated while preserving and enhancing creek corridors to meet multiple objectives, including flood protection, habitat enhancement, and more parks and open space within the urban environment.

Similar challenges exist in other urbanized areas in California.

Addressing these broad challenges requires a similarly broad variety of funding sources and other support for local agencies. In addition to general support for a multi-objective approach, the Water Plan Update should identify—or include a commitment to identify—funding for both large and small projects. This should include capital projects, maintenance projects, and restoration projects that provide incremental amounts of flood protection.

*San Joaquin River*

The section on flood governance should identify the particularly complex pattern of responsibility for the maintenance of flood protection facilities in this region, including the role of irrigation districts and private parties in levee maintenance and how rapid conversion of agricultural land to residential uses is affecting the risk of flood damages.

Agencies in this area have experienced extensive delays in implementing ACOE-funded projects, including those intended to reduce frequent flooding on Black Rascal Creek (Merced County) and Oriston Creek (Stanislaus County).

*South Coast*

The regional report should note the difficulty agencies this region have obtaining environmental permits to maintain existing channels at design capacity. For example, there is a Habitat Conservation Plan in process for the Coachella Valley Storm Channel, but difficulties remain communicating with the Regional Water Boards and ACOE regarding permitting for maintenance. Typically, maintenance can only be performed in a narrow seasonal window, substantially increasing maintenance costs. The draft notes the impact of *arundo donax*, particularly in the Santa Ana River, but should also note other invasive species, including tamarisk trees and African Clawed Frogs.

*Other Regions*

The Water Plan Update should note, in the strategies or regional reports or both, regional differences in local flood control needs and in particular the needs of county flood control agencies in lower-population and less economically developed areas.

Agencies in South Coast coastal areas and San Francisco Bay Area describe themselves as becoming more and more focused on maintenance and long-term replacement of existing facilities, many of them built with ACOE participation. Some agencies in the Inland Empire area and Sierra foothills are focused on new ACOE projects to reduce flood risk in newly urbanizing areas. Counties such as San Luis Obispo, Butte, Mono, Alpine, and others have few existing or planned ACOE-funded facilities. These agencies report responding to floods, identifying and mapping existing flood-prone areas, and developing plans for improved flood protection are among their top priorities.

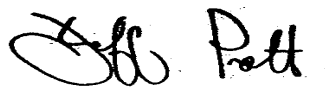
**Summary**

The Flood Management Additions to the Initial Draft of the California Water Plan Update 2009 includes useful summaries of watershed characteristics, historic flood damages, and existing flood control facilities. The additions could be greatly strengthened by considering flood management as an integrated practice incorporating long-term planning, stakeholder processes, floodplain management, environmental stewardship, maintenance, and multi-objective approaches where warranted.

The Water Plan Update should discuss the needs identified by flood management staff in California's County flood control agencies and recommend solutions that will advance the work of those agencies overall. Most significantly, the update should identify available funding mechanisms and criteria to ensure a fair proportion of available water-related funding is allocated to flood management and funding is distributed to appropriately throughout the state.

Thank you for considering our comments. We look forward to opportunities to share further input in the near future.

Sincerely,



Jeff Pratt, Chair

CEAC Flood Control and Water Resources Committee

Karen Keene, Legislative Representative

CSAC