



DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO
CORPS OF ENGINEERS
1325 J STREET
SACRAMENTO, CALIFORNIA 95814-2922

REPLY TO
ATTENTION OF

February 9, 1998

Executive Office

Mr. Wayne White
Field Supervisor
United States Fish and Wildlife Service
3310 El Camino Avenue
Sacramento, California 95821

Dear Mr. White:

As you are aware, the rains of December 1996 and January 1997 resulted in record flooding in various areas of the San Joaquin River Basin. One of the areas suffering significant damage was the levees protecting Reclamation Districts 2099, 2100 and 2102. As an alternative to the structural rehabilitation to the damaged levees, a nonstructural demonstration project has been proposed which would include the fee title acquisition of 3,230 acres within those Reclamation Districts, which are adjacent to and partially within the San Joaquin River National Wildlife Refuge. This would accommodate an expansion of the refuge. Both the U.S. Army Corps of Engineers and The Reclamation Board, State of California, support this proposal and are looking forward to working through outstanding issues with you. The purpose of this letter is to express the intent of the respective agencies regarding implementation of the nonstructural approach.

During and after the January 1997 flood event, significant repair and rehabilitation activities under the Corps' PL 84-99 emergency levee rehabilitation assistance program were initiated, including the establishment of an Interagency Task Force (ITF) to evaluate rehabilitation options. One of the PL 84-99 recovery actions was to consider implementation of nonstructural alternatives in accordance with Section 202(e) of the Water Resources Development Act of 1996. This nonstructural alternative is consistent with this directive.

The Reclamation Board, pursuant to an agreement with the U.S. Army Corps of Engineers, and as authorized in 1953 pursuant to Section 12651 of the Water Code, is the non-Federal sponsor for the Lower San Joaquin River and Tributaries Project, and has agreements with Reclamation Districts 2099, 2100, and 2102 for the operation, maintenance and financial assurances for the project. The Reclamation Board, in the name of the Sacramento and San Joaquin Drainage District, owns easements for the



construction, repair, operation and maintenance of the flood control levees within the three Reclamation Districts. In response to the floods, the State of California issued the Flood Emergency Action Team (FEAT) Report that produced recommendations that include support of the U.S. Fish and Wildlife Service's efforts to acquire Reclamation Districts 2099, 2100 and 2102, in a manner which supports and advances CALFED ecosystem restoration goals, and in cooperation with the California Department of Transportation to assure protection of existing highways. In accordance with this recommendation, the State of California will cooperate in pursuing implementation of the nonstructural alternative, consistent with existing law, the need to provide flood protection and protecting the State's financial interests.

It should be noted that The Reclamation Board has no specific authority to deauthorize certain portions of the flood control system. The California Attorney General has concluded that The Reclamation Board has no authority to make a substantial change in an authorized project without additional legislative authority (24 Ops. Cal. Atty. Gen. 259, 1954). In response to this opinion, the State Legislature amended Water Code Section 8621 authorizing The Reclamation Board to implement substitute flood control plans under certain conditions. The Reclamation Board and the United States Army Corps of Engineers shall pursue modification of the authorized flood control project.

Public meetings and hearings conducted to discuss the actions to be taken, the actions described in the FEAT Report, the U.S. Army Corps of Engineers Project Information Reports, the ITF newsletters, and the Environmental Assessments circulated by the U.S. Army Corps of Engineers to provide for public review, are all indicative of our agencies' intent to cooperate in pursuing this project. Completion of the project will comply with all applicable laws and regulations.

We have enclosed three signed original outlines of various issues to be resolved and preliminary agreements made by our agencies in attempting to advance the proposed nonstructural alternative. The parties participation in the nonstructural alternative is dependent upon satisfactory resolution of the issues raised in the outline. We request your agency acknowledge, by signature, the outline and return an original each to the U.S. Army Corps of Engineers and The Reclamation Board.

Sincerely,

Handwritten signature of Dorothy F. Klasse in black ink.

Dorothy F. Klasse
Colonel, Corps of Engineers
District Engineer

Handwritten signature of Peter Rabbon in black ink.

Peter Rabbon
General Manager
The Reclamation Board
State of California

Enclosures

**OUTLINE OF ISSUES AND PRELIMINARY AGREEMENTS
NONSTRUCTURAL ALTERNATIVE TO STRUCTURAL REPAIRS
RECLAMATION DISTRICTS 2099, 2100 and 2102**

I. United States Fish and Wildlife Service:

A. The United States Fish and Wildlife Service will complete compliance with the National Environmental Policy Act (NEPA) for the proposed expansion of the San Joaquin National Wildlife Reserve.

B. The United States Fish and Wildlife Service will complete appraisals and conduct negotiations with willing sellers for the acquisition activities within Reclamation Districts 2099, 2100 and 2102.

C. The United States Fish and Wildlife Service will seek funding in cooperation with the National Resources Conservation Service, to support nonstructural alternatives.

D. The United States Fish and Wildlife Service will not breach the existing levees, to create wetlands areas, until the United States Army Corps of Engineers hydrologic analysis has been completed and the Reclamation Board has agreed in writing (reference items II.A. and III.A., below).

II. United States Army Corps of Engineers:

A. The United States Army Corps of Engineers will provide recommendations to the United States Fish and Wildlife Service and The Reclamation Board for nonstructural alternative operations and breaching of the levees. The United States Army Corps of Engineers will provide a written report of their recommendations to the United States Fish and Wildlife Service, within six months of acknowledgment of this outline.

B. The United States Army Corps of Engineers has available funding under the provisions of PL 84-99, Flood and Coastal Storm Emergencies Act (33 U.S.C. 701n, 69 stat, 186) as amended, category Rehabilitation and Code 910-310, and shall pursue the acquisition of flowage easements and related nonstructural activities within and adjacent to Reclamation Districts 2099, 2100 and 2102.

C. The United States Army Corps of Engineers shall pursue modification of the authorized flood control project by negotiating, in good faith, an amendment to the existing assurance agreement and Supplement to the Standard Operation and Maintenance Manual for the Lower San Joaquin River and Tributaries Project, California, Unit No. 12 with The Reclamation Board, to reflect modified obligations due to these nonstructural alternatives, within 60 calendar days of the acknowledgment of this letter of intent.

D. The United States Army Corps of Engineers shall prepare an Memorandum of Understanding (MOU) with the United States Fish and Wildlife Service to document mutual commitments and obligations regarding operations of the nonstructural alternative. This MOU shall be effective at the closing of the acquisition activities with Reclamation Districts 2099, 2100 and 2102, but shall not preclude closing at an earlier date if mutually agreeable.

III. The Reclamation Board, State of California:

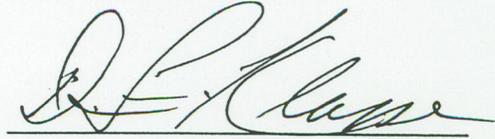
A. The Reclamation Board will be responsible for compliance under the California Environmental Quality Act. The statutory exemption to the California Environmental Quality Act enacted in 1997, SB 181, only applies to rehabilitation activities within the existing rights-of-way. Before The Reclamation Board can take any action, California Environmental Quality Act compliance will be necessary.

B. The Reclamation Board will in good faith negotiate an amendment to the existing assurance agreement and Supplement to the Standard Operation and Maintenance Manual for the Lower San Joaquin River and Tributaries Project, California, Unit No. 12 with the United States Army Corps of Engineers, to reflect modified obligations due to these nonstructural alternatives, within 60 calendar days of the acknowledgment of this outline.

C. The Reclamation Board will revise or terminate existing agreements with Reclamation Districts 2099, 2100 and 2102 to reflect removing these areas from the authorized flood control project. These actions will be subject to approval of the Reclamation Board. If in the event all real property within the reclamation districts is acquired by the United States and the existing assurance agreement and operation and maintenance manual are revised, all The Reclamation Board obligations to the United States cease.

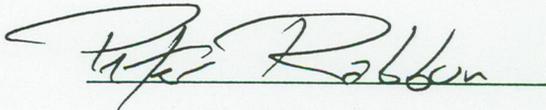
D. The Reclamation Board shall be responsible for disposition of The Reclamation Board owned property rights. If a levee is abandoned, The Reclamation Board needs to either maintain the levee right-of-way or dispose of it. The Reclamation Board could relinquish its easement rights to the underlying fee owner or maintain ownership in case the nonstructural alternative later proves unworkable or there is a desire to repair and maintain the levees. Any disposition of The Reclamation Board owned property will be a decision for The Reclamation Board.

Acknowledged by:



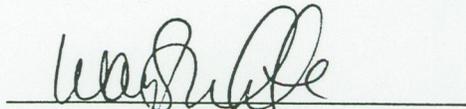
Date: 9 Feb 98

Dorothy F. Klasse
Colonel, Corps of Engineers
District Engineer



Date: 2/12/98

Peter Rabbon
General Manger,
The Reclamation Board
State of California



Date: 2/18/98

Wayne White
Field Supervisor
United States Fish and Wildlife Service