



Legal action could stall Natomas levee repairs

mweiser@sacbee.com

Published Monday, Mar. 09, 2009

Levee repairs in Sacramento's Natomas Basin face new legal and financial threats that could delay construction of the massive project. The Sacramento Area Flood Control Agency is just weeks from awarding a \$90 million construction contract for a key phase of the project. But that work depends on state matching funds, which have been bottled up by the state budget crisis.

And last week, the Garden Highway Community Association filed two new legal actions against the project. One is a lawsuit in Sacramento Superior Court against SAFCA. It claims the agency failed to fully analyze environmental damages caused by the first phase of construction along the Sacramento River. Recent changes to these plans, contained in a supplemental environmental impact report approved in January, involve a wider seepage berm in one area that critics say could eliminate more habitat than originally expected.

The second action is a notice of intent to sue the U.S. Army Corps of Engineers, filed in federal court. The community group claims the corps analysis of environmental harm caused by the levee project is inadequate. Doug Cummings, president of the Garden Highway Community Association, said his group is particularly concerned that 1,000 trees are already being removed to accommodate the wider levee. "Am I just protecting my own house? That's part of it, because I don't like to drive down Garden Highway just looking at a giant berm of dirt," Cummings said. "But most everybody has respect for the Garden Highway's beauty, and we hate to see it destroyed. That's what the lawsuit is about."

SAFCA officials say one section of seepage berm, about a quarter-mile long, needs to be wider to protect historic resources in the area. They stand behind their environmental analysis and say trees need to be removed now to be ready for construction as soon as funding is available. "What they seek to accomplish is to block the project, which is simply not going to happen," said SAFCA Executive Director Stein Buer. "There is no question this project is going to get done. It's the most important public safety project for the city and the region."

Last week, in a bid to sidestep the delays in state funding, Rep. Doris Matsui, D-Sacramento, introduced a bill in Congress to fully fund the \$618 million project, without waiting for approval by the Corps of Engineers. Buer said the local agency is spending \$3 million a month on consultants, studies and advance work to be ready for construction as soon as state or federal money is available. "SAFCA has demonstrated we can move this project along at a rapid clip, but we need fuel," he said, referring to the need for matching funds.

SAFCA had planned to award a \$90 million contract on March 18 to complete levee improvements on the Natomas Cross Canal and the northernmost 4.5 miles of levee along the Sacramento River in Natomas. But it opted to delay that for two weeks, until April 2, in hopes state funding comes through. The agency is waiting for the state to approve a funding agreement for the Sacramento River portion of that work, scheduled

for completion later this year. Such an agreement is already in place for the cross-canal, which can proceed if money is released by the state. If a funding agreement isn't signed in time, the first phase of Sacramento River levee repairs could stretch into 2010, Buer said. That could delay future phases of the project, which covers 42 miles of levees surrounding Natomas.

This, in turn, could prolong federally imposed development limits and a flood-insurance mandate in Natomas. It's unclear what is still holding up state funding, and also the status of separate state bond money for the project. The Natomas levee work was exempted from a freeze in bond funding imposed by the state in December. Officials at the state Department of Water Resources, which is reviewing the agreement, could not be reached Friday – a furlough day for state employees.

The federal government is expected to cover 75 percent of the project cost. That money can only begin flowing after the Corps of Engineers approves the project, which isn't expected until 2010. To avoid that delay, SAFCA is proceeding before corps approval by relying on its own budget and state funds, with the understanding that funds will eventually be reimbursed by the federal government.

Matsui's legislation would order full federal funding in advance of formal corps approval. This would allow the federal share – \$463 million – to begin flowing immediately. "We must move swiftly to reduce the risk of flooding in the Natomas Basin," Matsui said in a statement. "If passed, this needed legislation will help ensure the safety of the residents and businesses in the basin."