



Legislation Text

File #: 09-1219, **Version:** 1

Transportation Department recommending adoption of Resolution supporting the Clean Water Act Section 404 Streamlining Proposal to exempt maintenance of flood control channels and facilities as proposed by the County Engineers Association of California.

Resolution 255-2009

Background:

The Clean Water Act (CWA) and subsequent amendments have positively impacted the health of our nation's rivers and streams, as well as introducing a host of unintended consequences, one of which is the negative impact of CWA Section 404 permitting on the maintenance of flood protection and drainage facilities.

Section 404 governs discharge of dredge or fill material into waters of the United States and exempts certain activities from requiring permits including activities performed for the purpose of maintenance of currently serviceable structures. Counties, local flood protection agencies, and similar government agencies in California and the nation are required to obtain Section 404 Permits from the U.S. Army Corps of Engineers (USACE) to perform maintenance removal of sediment, debris and overgrown vegetation from flood protection facilities.

Congress included Section 404 (f)(1)(B) of the CWA which defines a non-prohibited discharge of dredge or fill material as: "...discharge of dredge or fill material for purposes of maintenance including emergency reconstruction...", leading to the conclusion that Congress intended for maintenance activities of currently serviceable flood protection facilities to be exempt from Section 404 Permit requirements. However, the USACE has interpreted that the maintenance exemption does not apply to routine maintenance removal of accumulated sediment, debris, and overgrown vegetation from flood protection facilities and drainage ditches.

Reason for Recommendation:

The narrow interpretation of the maintenance exemption statute by the USACE has caused an increase in the workload, creating a significant backlog in permit processing that is hampering local agencies' efforts to perform its maintenance in a timely and responsive manner. Delays in performing critically needed maintenance activities results in undue liability for flood damages on local flood protection agencies. The processing time, which is typically one to three years, and compensatory mitigation required to obtain Section 404 Permits have become an impediment for local agencies to provide critical flood protection.

Support for this concept is growing among stakeholder organizations statewide and across the country. The County Engineers Association of California (CEAC) adopted this item in its 2009-10 Policy and Legislative Priorities; the California State Association of Counties (CSAC) officers approved this item for inclusion in CSAC's 2009 Federal Legislative Platform; the National Association of Counties (NACo) has identified this issue as a concern and is interested in obtaining input from counties throughout the nation; and the National Association of Flood and Stormwater Agencies (NAFSMA) has voiced a need to streamline 404 Permitting.

The CEAC Flood Control Committee is proposing the legislative action to extend the General Permit term from 5 to 10 years and to include a maintenance exemption for removal of sediment, debris and vegetation from flood control and drainage facilities.

Action to be taken following Board approval:

- 1) The Board Clerk will obtain the Chairman's signature on the Resolution and will forward one original Resolution to the DOT.

Contact:

James W. Ware, P.E.
Director of Transportation

Concurrences: County Counsel