

**Meeting Minutes  
County Engineers Association of California  
Flood Control and Water Resources Policy Committee**

**March 23, 2011**

**1. Update on Army Corps of Engineers Levee Vegetation Policy**

- NAFSMA sent a letter to the Corps requesting reasonable modifications to the Corps Levee Vegetation Policy.
- Congress sent two letters to the Corps with the second letter being more specific by requesting a delay of the PGL, continuing to address stakeholder comments and establishing a mechanism to address implementation issues in California. The Corps responded and did agree to postponing the release of the PGL until sometime this summer.
- DWR has proposed alternative variance language to be submitted to the Corps that will help articulate our issues and how we would like to see a variance process adopted. A subcommittee of this policy committee is currently working with DWR on this alternative language. Let Karen know if you would like to be included in this subcommittee.

**2. Department of Fish and Game Mitigation and Endowment Requirements**

- Orange County developed an alternative for one project that was acceptable to Fish and Game in lieu of an endowment. That alternative included a pledge of revenue from the County to budget the annual maintenance costs in their budget process each year and to set aside three years of maintenance costs into an escrow account.
- Fish and Game has subsequently developed a pilot program similar to, but expands upon, the Orange County alternative. The pilot program only applies to counties that have a NCCP and requires them to have a pledge of revenue, a conservation easement placed over the mitigation area and five years of maintenance costs set aside in escrow. There is also a clause that if the County defaults then they will put up a full endowment. Orange County is looking to the future and is anticipating monitoring and tracking issues with a myriad of escrow accounts. They are instead proposing to have one escrow account that would be a common fund for all projects. Orange County is currently working on the cost estimates for this common fund approach.

### **3. Section 404 Streamlining Proposal**

Herb Nakasone with Orange County has been working on clarifying maintenance exemption provisions in the Clean Water Act. There is an exemption in the Clean Water Act to remove vegetation on levees but the Corps has historically misinterpreted the provision. Our objective is to clarify the exemption for our maintenance operations. The issue is what constitutes a structure? Attached is a status report prepared by Herb.

### **4. Statewide Flood Control Needs Assessment**

- DWR has hired CH2M HILL as their consultant to prepare the Needs Assessment Report.
- Currently working on a vision document for the project and working internally with DWR review. DWR will want input from CEAC towards the end of March with comments due by the end of April.
- The Needs Assessment Report on statewide flood control issues is due the same time as the Central Valley Flood Protection Plan in early 2012. The next Water Plan update is in 2013 and the final Needs Assessment Report will be completed in 2014.
- They will be proposing pilot projects to beta test the process of acquiring flood control needs throughout the state.

### **5. Report on State Water Boards Proposed Wetland and Riparian Policy**

The State started out with a wetlands and riparian area policy but has recently scaled back to strictly a wetlands area protection policy. The State also decided to conduct an EIR for this process and just held EIR scoping sessions. The comment period will end May 20, 2011. Everyone should consider submitting comments and think about what the impacts are for their operations. These wetlands will not just be along traditional water bodies but also include isolated wetlands throughout the county.

### **6. FEMA Mapping Changes**

Most counties received a letter from FEMA that they were going to be delaying the issuance of flood insurance rate maps. This is due to FEMA changing a process to analyze and develop floodplain maps. It was unclear from the letters whether counties with current decertified levees or efforts by FEMA to revise maps would be included. It was suggested that if you are in that situation to write a formal letter to FEMA requesting clarification whether your mapping projects would be postponed. It was agreed that we need to stay engaged with FEMA to determine how they will be revising their floodplain analysis and map development in the future.

## **7. Creek and Channel Safety**

Contra Costa County had two teenagers drown in a flood control channel and is developing a public awareness campaign on the hazards of storm flows in flood control channels. Anyone with any ideas for developing an awareness program or has a current outreach or safety information, please contact Mitch Avalon.

## **8. Retirement**

Mitch Avalon announced that he will be retiring from Contra Costa County service effective March 31, 2011. He will contract back to Contra Costa County for a transition period but will be restricted after July to 960 hours per fiscal year.

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## CEAC 404 Permit Sub-Committee Status Report

March 23, 2011

### **SUB-COMMITTEE ACTIVITIES**

The sub-committee last had a conference call on September 9, 2010, where it was reported that Representative Miller of Diamond Bar, California was still interested in supporting our efforts to amend the Clean Water Act (CWA) to clarify the existing maintenance exemption provisions. However, the sub-committee also noted that the approaching November election could result in revised legislative priorities if a Republic majority were elected to either House. The sub-committee decided to wait until after the election before it determined the next course of action.

### **BACKGROUND**

In 2007 and again in 2009 Rep. James Oberstar introduced legislation to amend the CWA to apply to *all waters* of the US as opposed to “navigable waters” as determined by the Courts in 2006. Through the efforts of CEAC and the County of Orange Rep. Gary Miller offered to request drafting services from the Corps of Engineers (Corps) for legislative language that would:

1. Include a maintenance exemption for routine maintenance of flood control and drainage facilities, including removal of sediment, debris and vegetation and,
2. Extend the General Permit Term from 5 to 10 years.

With support from Orange County, Rep. Miller submitted the sub-committee’s proposal to the Corps for review and received draft language from the Corps that was very similar to that developed by the sub-committee.

### **RECENT ACTIVITIES**

The recent shift in the House of Representatives to a Republican majority has not altered Rep. Miller’s support for clarifying maintenance exemption provisions in the CWA. However, a different approach to amending the CWA is being considered. Rep. Miller’s staff has reported that Congressional committees are reviewing federal regulations that “do not make sense or are overly burdensome” and may include them in a larger bill package.

CEAC’s original proposal included language to extend General 404 permits from 5 to 10 years. This proposal is being held back by Rep. Miller’s staff at this time since the proposal to include flood control maintenance as part of the exemption provision in the CWA, if adopted, will remove the concern regarding permit terms.

### **SUMMARY**

The approach that will ultimately used by Rep. Miller to introduce our proposal is unknown at this time. Statewide and national support for this proposal continue to be key factors in its success. CEAC members are encouraged to share this information with their elected federal and local representatives and provide support to Rep. Miller and the House Water Resources and Environment Sub-Committee, along with the larger Transportation and Infrastructure Committee, of which the sub-committee is a part. → TURN OVER PLEASE

## **CURRENT CWA LANGUAGE PROPOSAL**

The proposal currently being advocated by Rep. Miller is as follows:

To clarify the CWA Section 404 regarding maintenance activities of flood control and drainage facilities, the following amendments are proposed.

1. The Corps has defined channel and drainage inverts as not being part of the “serviceable structure” of a flood protection facility and therefore not exempt from maintenance activities as defined in the Act under Section 404 (f) (1) (B).

To clarify this provision the following is proposed to be added to paragraph 404(f) (1) (B):

404(f)(1)(B) for the purpose of maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, and bridge abutments or approaches, and transportation structures; drainage and flood control channel inverts constructed of soil, sand, gravel, rock, rock rip rap, concrete, asphalt or any other material placed in the invert as part of the initial construction or reconstruction and the sediment, debris and vegetation management of said serviceable structures.

Propose Amending Section 404(F) (2)

2. Section 404(f) (2) is the so-called “recapture clause” due to its subjective authority which allows the Corps to require a permit “where the flow or circulation of navigable waters may be impaired or the reach of such waters be reduced...” This “recapture clause”, as interpreted by the Corps may be used to void most of the maintenance exemptions offered by the CWA. For that reason it is recommended that the “recapture clause” not be applicable to maintenance of flood protection and drainage facilities.

This can be accomplished by adding, “Except for Sec.404 (f) (1) (B)” at the beginning of Sec. 404 (F) (2) to read as follows:

Section 404(f) (2) Except for Section 404 (f) (1) (B) of this subsection, any discharge of dredged or fill material into the navigable waters incidental to a activity having as its purpose bringing an area of the navigable waters into a use to which it was not previously subject, where the flow or circulation of navigable waters may be impaired or the reach of such waters be reduced, shall be required to have a permit under this section.