

**SUBMITTAL TO THE FLOOD CONTROL AND
WATER CONSERVATION DISTRICT BOARD
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

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FROM: General Manager-Chief Engineer

SUBMITTAL DATE:
July 21, 2009

SUBJECT: Amendments to the federal Clean Water Act

RECOMMENDED MOTION:

Adopt Resolution No. F2009-28 which i) declares the Board's support for reasonable federal regulation of flood control maintenance activities, and ii) supports amendments to the federal Clean Water Act that preserve, strengthen and clarify existing statutory language concerning the maintenance of existing flood control facilities.

BACKGROUND:

Continued on Page 2.

RS:MHW:mcv
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Spe Thomas
FOR WARREN D. WILLIAMS
General Manager-Chief Engineer

FINANCIAL DATA	Current F.Y. District Cost:	N/A	In Current Year Budget:	N/A
	Current F.Y. County Cost:	N/A	Budget Adjustment:	N/A
	Annual Net District Cost:	N/A	For Fiscal Year:	N/A

SOURCE OF FUNDS:	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY: *Michael R Shetler*
Michael R. Shetler

County Executive Office Signature

FORM APPROVED/COUNTY COUNSEL
BY *Carin L. Watts-Bazan* DATE *7/8/09*
Departmental Concurrence

- Dept't Recomm.: Consent Policy
- Per Exec. Ofc.: Consent Policy

30 JUL 2009 13:30

Prev. Agn. Ref.: | **District:** All | **Agenda Number:** 11.1

11.1

**FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD SUBMITTAL
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

SUBJECT: Amendments to the federal Clean Water Act

SUBMITTAL DATE: July 21, 2009

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BACKGROUND:

Congress is currently considering amendments to the federal Clean Water Act (CWA) which could result in a significant expansion of federal jurisdictional authority over District flood control maintenance activities pursuant to Section 404 of the Act.

The District along with San Bernardino, Orange, Los Angeles and Ventura Counties, the California State Association of Counties (CSAC) and the National Association of Flood and Stormwater Management Agencies (NAFSMA) are working together to ensure that any proposed amendments to the CWA preserve, strengthen and clarify existing statutory language concerning the maintenance of existing flood control facilities.

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BOARD OF SUPERVISORS

RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT

**RESOLUTION NO. F2009-28
IN SUPPORT OF AN AMENDMENT TO THE CLEAN WATER ACT
TO ADDRESS MAINTENANCE OF FLOOD CONTROL FACILITIES**

WHEREAS, the Federal Water Pollution Control Act of 1948 was amended in 1977 and renamed the Clean Water Act (Act); and

WHEREAS, Section 404 of the Act requires a permit for the discharge of dredged or fill material into waters of the United States; and

WHEREAS, Section 404(f)(1)(B) of the Act states that the discharge of dredged or fill material for the purposes 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, is not prohibited by or otherwise subject to regulation under this Section, Section 301(a) or 402 of the Act; and

WHEREAS, the responsibility for administering and enforcing Section 404 of the Act is shared by the U.S. Army Corps of Engineers (USACE) and U.S. Environmental Protection Agency (USEPA); and

WHEREAS, the USACE issues regulations, administers the day-to-day activities of the Section 404 permitting program, including determining whether specific activities are subject to Section 404 jurisdiction, establishing permit conditions, and developing policy and guidance, and initiates enforcement actions; and

WHEREAS, the USEPA issues regulations, develops and interprets various criteria used in evaluating permit applications, identifies activities that are exempt from permitting, reviews/comments on permit applications, enforces Section 404 provisions, and has authority to veto USACE permit decisions; and

WHEREAS, the USACE or USEPA may refer their enforcement actions to the U.S. Attorney General for the possible filing of Federal civil and criminal charges; and

FORM APPROVED BY COUNTY COUNSEL
BY: *Karin L. Watts-Bazan* 7/8/09
KARIN L. WATTS-BAZAN DATE

1 WHEREAS, the USEPA and the USACE have, on occasion, disregarded the plain
2 language of Section 404(f)(1)(B) exemption language, filed enforcement actions, and required
3 Section 404 permits to perform critically important maintenance work within or adjacent to
4 existing flood control and drainage facilities (e.g., channels, levee systems, dams and reservoirs),
5 including the maintenance of recently eroded channels and levees where such damage diminishes
6 the level of flood protection such facilities were intended to provide; and

7 WHEREAS, recent Supreme Court rulings (SWANCC, Rapanos, et al), and subsequent
8 Federal regulatory actions have further added confusion concerning Federal jurisdiction pursuant
9 to the Act; and

10 WHEREAS, despite past and ongoing national efforts to streamline the Section 404
11 permitting process for the maintenance of existing flood control facilities, the process for
12 obtaining permits remains lengthy, costly and unpredictable; and

13 WHEREAS, USACE and USEPA have often been reluctant to authorize critically
14 important maintenance of existing flood control facilities without imposing costly, time
15 consuming and overly restrictive permit conditions; and

16 WHEREAS, the District typically has limited time and funds to accomplish its necessary
17 routine maintenance activities in order to avoid the "rainy season", the "nesting season" and/or
18 "spawning season" and, therefore, lengthy Section 404 permit processing times increase the risk
19 that the District's flood control and drainage facilities may fail to provide the full measure of
20 their critical public health and safety benefits, as designed; and

21 WHEREAS, the District has previously partnered with the USACE on the construction of
22 certain major flood control facilities where the District agreed to assume Federally specified
23 maintenance responsibilities prior to promulgation of the Section 404 permit regulations; and

24 WHEREAS, these Federally sponsored flood control facilities along with many similar
25 District flood control facilities were designed and constructed prior to promulgation of the
26 Section 404 permit regulations and; therefore, are not readily amenable to the incorporation of
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1 native/riparian habitat or other forms of mitigation for maintenance activities within the project
2 limits; and

3 WHEREAS, regular ongoing maintenance of the Nation's existing flood control and
4 drainage infrastructure is essential to the public health, safety and economic security of
5 communities throughout the nation; and

6 WHEREAS, Congress is currently considering amendments to the Act which may result
7 in a significant expansion of USACE and USEPA jurisdictional authority pursuant to Section
8 404.

9 NOW, THEREFORE, BE IT RESOLVED, by the Board of Supervisors of the Riverside
10 County Flood Control and Water Conservation District in regular session assembled on July 21,
11 2009 that this Board supports the reasonable regulation of flood control maintenance activities
12 and advocates necessary revisions to the Act and/or USACE and USEPA Section 404 regulations
13 as follows:

- 14 1. Any amendments to the Act shall preserve, strengthen and further clarify the current
15 exemption for maintenance of currently serviceable flood control and drainage
16 facilities under Section 404(f)(1)(B) of the Act.
- 17 2. Amend the Act to clearly exempt required maintenance activities that are carried
18 out by local non-Federal sponsors in accordance with Federal operation and
19 maintenance (O&M) manuals for Federally-constructed or Federally-funded flood
20 control and drainage facilities from the Section 404 permitting process; or,
21 alternatively, provide direction and funding to the USACE to accomplish the
22 following:
 - 23 i. Update the Federal O&M manuals and obtain the necessary permits to clearly
24 authorize the maintenance of the Federally-constructed or Federally-funded
25 flood control facilities - without imposing additional costs on the local non-
26 Federal sponsor.

- 1 ii. Through revisions to the Section 404 regulations, prescribe non-negotiable
2 permit review time frames to expedite the Section 404 permit approval
3 process for flood control maintenance activities.
- 4 iii. Through revisions to the Section 404 regulations clearly exclude flood control
5 maintenance activities from the Section 404(b)(1) alternative analysis
6 requirements.
- 7 iv. Through revisions to the Section 404 regulations establish a framework for a
8 time-certain arbitration process where disputes over permit terms or
9 restrictions on flood control maintenance activities can be resolved in a timely
10 manner.
- 11 v. Require the USACE to establish and follow a policy wherein all construction
12 and subsequent long-term operation and maintenance activities of flood
13 control and drainage facilities are evaluated and authorized as part of the
14 original project approval and permits.

15 RS/TT/MHW:bjp
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