Valley Water

SANTA CLARA VALLEY WATER DISTRICT

NON-AGENDA

December 6, 2019

Board Policy EL-7 Communication and Support to the Board
The BAOs shall inform and support the Board in its work.

Board correspondence has been removed from the online posting of the Non-Agenda to protect personal contact information. Lengthy reports/attachments may also be removed due to file size limitations. Copies of board correspondence and/or reports/attachments are available by submitting a public records request to publicrecords@valleywater.org.

CEO BULLETIN

CEO BULLETIN

To: **Board of Directors**
From: **Norma J. Camacho, CEO**

Week of November 29 – December 5, 2019

Board Executive Limitation Policy EL-7:
The Board Appointed Officers shall inform and support the Board in its work. Further, a BAO shall 1) inform the Board of relevant trends, anticipated adverse media coverage, or material external and internal changes, particularly changes in the assumptions upon which any Board policy has previously been established and 2) report in a timely manner an actual or anticipated noncompliance with any policy of the Board.

Item	IN THIS ISSUE
1	**2019 Silicon Valley Advanced Water Purification Center (SVAWPC) Shutdown for Annual Maintenance**
2	**City of Milpitas — Contaminant Overflow Prevention Project B3 Grant Closeout**
3	**Continuous Improvement: Continued Effort to Minimize Respirable Crystalline Silica Dust Exposure**
4	**Upcoming Rinconada Water Treatment Plant (RWTP) System Outage**

1. 2019 Silicon Valley Advanced Water Purification Center (SVAWPC) Shutdown for Annual Maintenance

Beginning December 2, 2019, the Silicon Valley Advanced Water Purification Center (SVAWPC) will be shut down for two (2) weeks to carry out a number of annual maintenance projects: chemical tank inspections, preventative maintenance activities and biennial electrical testing. In addition, Valley Water's plant maintenance and engineering team will complete a motor replacement for one of the reverse osmosis feed pumps.

This shutdown is planned to occur annually in December when the recycled water demand is low. During this period, South Bay Water Recycling customers might experience different water quality due to a higher level of total dissolved solids.

SVAWPC is scheduled to return to service by the end of the workday on December 13, 2019.

For further information, please contact Bhavani Yerrapotu at (408) 630-2735.

2. City of Milpitas — Contaminant Overflow Prevention Project B3 Grant Closeout

The City of Milpitas received a $30,745 Safe, Clean Water B3: Pollution Prevention Grant for the Contaminant Overflow and Backflow Prevention Project. The project began on June 30, 2018 and was completed on January 1, 2019. The City purchased and installed thirty (30) SmartCover devices at strategic manhole locations adjacent to water bodies and creeks to prevent contaminants from entering nearby waterways in the event of a sanitary sewer overflow.

The SmartCover technology provides real-time security intrusion detection and continuous monitoring of sewage levels at manholes. This technology has the capability of transmitting alarms to forewarn the City of a potential sanitary sewer overflow, allowing the City to immediately dispatch staff to locations of concern and reduce the likelihood of an overflow. The success of this project will be measured by both the reduction of future sanitary sewer overflows and the reduction of contaminants entering creeks and nearby waterways.

Key Outcomes

1. Proactive prevention and reduction of sanitary sewer overflows.
2. Improved sanitary sewer overflow response time.
3. Increased protection to the health and safety of the public and environment.

For further information, please contact Rick Callender at (408) 630-2017

3. Continuous Improvement: Continued Effort to Minimize Respirable Crystalline Silica Dust Exposure

The California Occupational Safety and Health Administration (Cal/OSHA) has reduced worker's occupational exposures to crystalline silica dust from a permissible exposure limit (PEL) of 250 ug/m3 (micrograms per cubic meter) to the new lower PEL of 50 ug/m3. Crystalline silica is present in a variety of construction materials such as concrete, cement, sand, soil, brick, masonry, block, stone, mortar, paints, and drywall. During maintenance or construction activities, these materials can be disturbed through abrading, drilling, cutting, or chipping which can result in the release of airborne crystalline silica particulates.

To further protect Valley Water staff while working with crystalline silica, Environmental Health & Safety (EH&S) collaborated with Class Four staff to procure commonly used tools that are equipped with High-Efficiency Particulate Air (HEPA)/dust capturing vacuum systems, or water spray systems designed to keep silica dust levels down. Valley Water's local tool distributor provided an on-site demonstration of how to properly set up, utilize, and maintain this new equipment for Valley Water field crews. During the demo, field crews had the opportunity to obtain hands-on experience with the new tools, experience their ease of use, and see how effective these tools are in controlling airborne dust levels. After the hands-on portion of the demonstration was completed, the updated silica standard was reviewed with all of the attendees which reiterated the importance of using the proper equipment, the efficiency of these tools when they are used, and the importance of protecting staff from airborne crystalline silica dust exposure.

For further information, please contact Tina Yoke at (408) 630-2385.

4. Upcoming Rinconada Water Treatment Plant (RWTP) System Outage

The Rinconada Reliability Improvement Project continues to make progress integrating new systems into existing operations. Contractor Balfour Beatty Infrastructure Inc. will shut down two of the RWTP process areas from December 9 through December 13, 2019: the Powdered Activated Carbon and centrifuge systems. This shutdown will allow for necessary electrical tie-in activities and the testing of equipment and facilities that are essential for the startup and commissioning of the project's phase-2 processes.

During this system outage, RWTP will continue to deliver treated water to the west pipeline and no retailer impact is expected.

For further information, please contact Bhavani Yerrapotu at (408) 630-2735.

BOARD MEMBER REQUESTS and Informational Items

Report Name: Board Member Requests

Request	Request Date	Director	BAO/Chief	Staff	Description	20 Days Due Date	Expected Completion Date	Disposition
I-19-0018	10/31/19	Lezotte	Richardson	Gin	Staff to provide a response to Mr. Muirhead's comments made at the 10/25 BPPC meeting on regulatory permitting process.	11/20/19		
I-19-0019	11/04/19	Kremen	Hawk	Yerrapotu	Director Kremen is requesting a list of small community services districts and well owner associations	11/24/19		
I-19-0020	11/07/19	Varela	Hawk	Jacobson Kao	At the November 7, 2019 San Luis &Delta-Mendota Water Authority meeting Director Varela asked for a rate impact analysis of the San Luis Transmission Project, and for the potential impact on the benefit-cost analysis due to the pending Federal Energy Regulatory Commission's Order 841.	12/09/19	12/30/2019	12/05/19 CEO Bulletin: Staff requested additional time based on information being provided by outside agency. Response time extended to 12/30/19.
I-19-0021	11/20/19	Kremen	Hawk	Baker	From the SFPUC Intertie tour, Director Kremen is requesting the following information: Where it would make sense to add other system interties, Capacity Analysis related to SFPUC/BAWSCA's request to move Los Vaqueros Expansion water through Valley Water's system; any analysis on adding solar panels at the facility, or additional fuel storage, potential for using the site as a backup SCADA control center to operate the water treatment plants, and, Security needs and if this was addressed in a recent security	12/10/19	12/20/2019	11/20/19 Information Only: Erin Baker sent email regarding due date for request from Director due from Dec 10 to Dec 20. Email is attached.

Report Name: Board Member Requests

Request	Request Date	Director	BAO/Chief	Staff	Description	20 Days Due Date	Expected Completion Date	Disposition
					assessment.			
R-19-0014	11/12/19	Varela	Camacho	Chinte	Director Varela requesting the CEO provide a report to the Directors via one-on-one meetings or confidential memo on the cancellation of the October 28, 2019 Joint SCVWD/Morgan Hill/Gilroy Board/Council meeting.	12/04/19		
R-19-0015	11/26/19	Lezotte	King	Meredith	Chair LeZotte is requesting staff provide the purpose and scope of the board Audit Committee and process that is used to add items on committee workplans.	12/23/19		
R-19-0016	11/26/19	Keegan	Richardson	Nguyen	Director Keegan is requesting a comprehensive lessons learned on Permanente Creek Flood Protection Project when complete; and share with Board.	12/23/19		

Valley Water

MEMORANDUM
FC 14 (08-21-19)

TO: Board of Directors

FROM: Vincent Gin

SUBJECT: Board Policy and Planning Committee Regulatory Permitting Process Inquiry - Responding to IBMR No. I-19-0018

DATE: November 20, 2019

Per a request from Mr. Doug Muirhead at the October 25, 2019 Board Policy and Planning Committee meeting (Board Member Request No. I-19-0018), Valley Water staff prepared the following information on representative activities undertaken to address the complex regulatory process required for implementing Valley Water projects.

Mr. Muirhead raises an excellent point about the benefits of educating members of the public and other stakeholders about the complex and often iterative steps needed to ensure compliance with environmental regulations. Most Valley Water projects are subject to multiple permits from natural resource agencies, including the California Department of Fish and Wildlife, the US Army Corps of Engineers, US Fish and Wildlife Service, and State and/or Regional Water Quality Control Boards. These agencies are responsible for implementing state and federal environmental laws, the interpretation of which is not always straightforward for either agency or Valley Water staff. Valley Water is engaged in multiple efforts to ensure projects are designed to avoid or minimize environmental impact, to influence the legal interpretation of environmental regulations to allow necessary public safety and water supply projects and operations to move forward, and to otherwise streamline the permitting process.

This year, Water Utility environmental staff were integrated into the Watershed Stewardship and Planning and Watershed Operations and Maintenance Divisions. This consolidation of environmental services will provide a coordinated and regulating program across Valley Water. Specialized teams have also been formed to address environmental review and regulatory compliance for the most critical projects, including Anderson Dam Seismic Retrofit. Valley Water environmental staff maintain a guide to regulatory permitting for engineering project teams, as well as the public. This guide is scheduled for an update in 2020 but is included as Exhibit A to this response.

Also in 2019, Valley Water staff successfully influenced the development of state guidelines for wetland permitting, and collaborated with local agencies across the region to propose regulatory process improvements. Valley Water staff testified in State Water Resources Control Board hearings to develop state wetland definition and procedures for discharges of dredged or fill material to waters of the state. The procedures consist of four major elements: 1) a wetland definition; 2) a framework for determining if a feature that meets the wetland definition is a water of the state; 3) wetland delineation procedures; and 4) procedures for the submittal, review and approval of applications for Water Quality Certifications and Waste Discharge Requirements for dredge or fill activities. Working with a coalition of water agencies and flood control agencies from across the state, Valley Water staff helped shape a core practical policy.

In addition, Valley Water strives to smooth the regulatory process by meeting regularly with the US Army Corps of Engineers and San Francisco Bay Regional Water Quality Control Board to ensure early collaboration on project design, and focus attention on high-priority projects. Similar routine meetings with representatives of California Department of Fish and Wildlife are currently in the works. Since state and federal resource agencies tend to be underfunded and understaffed, Valley Water holds contracts with several of the agencies to pay for regulatory staff that support permitting specific to Valley Water projects.

Valley Water staff also collaborate with local agencies from around the region. Bi-monthly permitting coordination meetings are held with membership of the Bay Area Flood Protection Agencies Association (BAFPAA) to share insights about permitting experiences, foster shared commitment to consistent application of regulatory requirements, and learn ways to improve project development to facilitate permitting. BAFPAA was a partner in the development of the Flood Control 2.0 effort (https://www.sfei.org/projects/flood-control-20). Flood Control 2.0 is an innovative regional project that seeks to integrate habitat improvement and flood risk management at the Bay interface. The project focuses on helping flood control agencies and their partners create landscape designs that promote improved sediment transport through flood control channels, improved flood conveyance, and the restoration and creation of resilient bayland habitats. As part of this project, concerns were raised regarding the regulatory process that each project must undergo to receive permits. The permitting process in the San Francisco Bay region is complex, time consuming, and involves multiple agencies. The regulatory analysis and guidance reports include Valley Water's Stream Maintenance Program as a case study for a collaborative approach.

Valley Water also participates in the San Francisco Bay Restoration Regulatory Integration Team (BRRIT) for projects along the Bay shoreline. The purpose of the BRRIT is to improve the permitting process for multi-benefit wetland restoration projects and associated flood management and public access infrastructure in San Francisco Bay by dedicating agency representatives to review project information and prepare permit applications for consideration as a team in the most efficient manner.

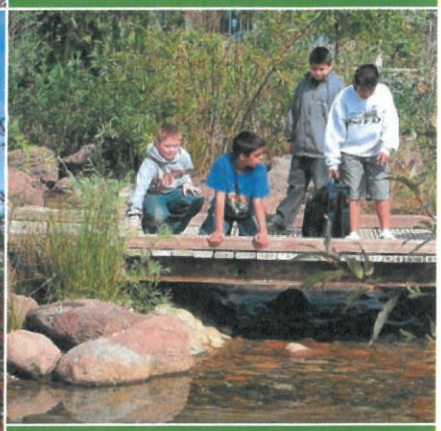
Finally, Valley Water will continue to participate in other venues such as the referenced Little Hoover Commission hearings to improve the regulatory compliance process.

Thank you for your continued interest in informing the public about Valley Water. For additional information about our regulatory compliance process or Valley Water's permit streamlining efforts, please don't hesitate to contact me at (408) 630-2633.

Kurt Lueneburger acting for
Vincent Gin
Deputy Operating Officer
Watersheds Stewardship and Planning Division

Attachment 1: Stream, Lake and Wetland Project Permitting Guide

Stream, Lake and Wetland Project Permitting Guide



Santa Clara Valley Water District

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Stream, Lake and Wetland Project Permitting Guide

Introduction

The Santa Clara Valley Water District (water district) plans and implements many programs, projects, and activities that have the potential to affect wetlands, streams, and/or other waters are likely to require permits from the resource agencies. Regulations pertaining to activities affecting surface waters such as reservoirs, lakes, ponds, rivers, streams, creeks, sloughs, and their associated habitats including wetlands and riparian woodlands are wide-ranging and complex. Any activity that could have an impact on a waterway, water body, wetland or riparian area, for example clearing vegetation, disturbing ground, or conducting work near a sensitive area requires permits from numerous agencies that have jurisdiction over these habitats.

The permitting process can be complicated and hard to understand. The goal of this permitting guide is to offer assistance to water district staff by giving an overview of the regulations, and providing examples of the permitting process. It is the responsibility of water district staff to identify what regulations apply before work begins, and most importantly identify how impacts can be avoided during the planning and design process. The primary and overarching goals of all environmental laws and regulations in order of priority are to:

1. avoid impacts;
2. minimize impacts that cannot be avoided; and
3. mitigate for unavoidable impacts.

Environmental review of water district programs, projects, and activities conducted under the California Environmental Quality Act (CEQA) or National Environmental Policy Act (NEPA), if there is a federal partner, are essential to the environmental permitting process. Water district environmental staff specialize in understanding and applying environmental regulations and understanding resource agency needs. The Office of District Counsel is generally involved in these complex environmental requirements to ensure the water district is fully complying with state and federal laws.

Included in this guide

This guide is intended to educate water district staff with the current regulations that affect the water district's programs, projects, and activities. The focus of this guide is on the regional, state and federal regulations, but does not address local requirements (e.g., County of Santa Clara or municipal jurisdictions). The process may seem complicated and can easily become so. There are three primary laws with accompanying regulations and procedures that typically apply to work in water and its adjacent aquatic habitat:

1. Clean Water Act (CWA), Sections 401,402 and 404;
2. Section 1600 et seq. of the Fish and Game Code, Lake and Streambed Alteration Agreement (LSA);
3. Porter-Cologne Water Quality Control Act.

More than one permit is often required for work in aquatic habitats and wetlands, and typically all three (401, 402, 404 & LSA) are required at a minimum.

Additional permits and consultations with resource agencies are required if rare, threatened, endangered, fully protected, species of special concern or their habitat exists at a work site, which often happens in aquatic habitats. Other laws and regulations apply to work in coastal areas of San Francisco Bay. Table 1: Jurisdiction, Laws and Regulations Applicable in Aquatic Habitat and Wetlands present some of the common laws or regulations and the resource agencies with jurisdiction.

Resource agencies regulating waters and their associated habitats include the United States Army Corps of Engineers (USACE), U.S. Environmental Protection Agency (EPA), San Francisco Bay or Central Coast Regional Water Quality Control Boards (RWQCB), California Department of Fish and Wildlife (CDFW), and San Francisco Bay Conservation and Development Commission (BCDC) for coastal waters. Waters and neighboring habitats are often home to at-risk organisms protected by the Federal Endangered Species Act (FESA), California Endangered Species Act, (CESA) or are California Fully Protected species. Work that may impact these species or their habitats requires consultation with the U.S. Fish and Wildlife Service (USFWS) and/or the National Oceanic Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS). Examples of the regulatory jurisdiction of the USACE and the CDFW are shown in Figures 1 through 3 in the appendix.

Table 1: Jurisdiction, Laws and Regulations Applicable In Aquatic Habitat and Wetlands

Jurisdiction	Law or Regulation	Resource Agencies with Jurisdiction
Federal	Federal Endangered Species Act (FESA), Fish and Wildlife Coordination Act, Magnuson-Stevens Fishery Conservation and Management Act, Executive Order 12962 Recreational Fisheries, Executive Order 12962 Recreational Fisheries	U.S. Fish and Wildlife Service and/or National Marine Fisheries Service
	Clean Water Act (CWA), Section 10 Rivers and Harbors Act, Executive Order 11990 Protection of Wetlands	U.S. Army Corps of Engineers & U.S. Environmental Protection Agency
	National Environmental Policy Act (NEPA)	All Federal Agencies
State	California Environmental Quality Act (CEQA)	All State agencies
	California Endangered Species Act (CESA)	California Department of Fish and Wildlife
	California Fish and Game Code	California Department of Fish and Wildlife, Fish and Game Commission
	Clean Water Act (Sections 401 and 402), Porter Cologne Water Quality Control Act, and supporting Water Quality Control Plan for the San Francisco Bay Basin and Water Quality Control Plan for the Central Coastal Basin (Basin Plans)	San Francisco Bay Regional Water Quality Control Board & Central Coast Regional Water Quality Control Board
	California Water Code	State Water Resources Control Board & Regional Water Quality Control Boards
	California Code of Regulations (Title 23)	State Water Resources Control Board & Regional Water Quality Control Boards
Regional	Coastal Zone Management Act and McAteer-Petris Act	San Francisco Bay Conservation and Development Commission
	Santa Clara Valley Habitat Plan/Natural Community Conservation Plan (NCCP)	Santa Clara Valley Habitat Agency

Streams and wetlands defined

Wetlands, streams, lakes, ponds, and other waters are highly variable physical and biological systems that support a wide range of ecological functions and play a key role in the larger ecosystems in which they occur.

The official definition of "wetland" differs among resource agencies, but all variations involve one or more of these three parameters:

- Wetland Hydrology: The presence of water at or above the soil surface for a sufficient period of the year to influence the plant types and soil chemistry.
- Hydric Soil: Soil that is wet long enough during the growing season to develop low-oxygen conditions.
- Hydrophytic Plants: Plants adapted to saturated soil conditions.

The USACE requires that all three parameters are present to define a wetland. However, the USFWS, CDFW, and BCDC require the presence of just one of the three parameters. Therefore, a jurisdictional wetland may not have surface water present. Site specific conditions need to be evaluated in the field by a certified wetland delineator.

Waters of the U.S.

The USACE and the EPA finalized the Clean Water Rule, which altered the defintion of Waters of the U.S. as the result of Supreme Court decisions in 2001 and 2006. The Clean Water Rule became effective on August 28, 2015. The current defintion of Waters of the U.S. is as follows:

(1) All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
(2) All interstate waters including interstate wetlands;
(3) The territorial seas;
(4) All impoundments of waters otherwise identified as waters of the U.S. under this section;
(5) All tributaries of waters identieid in paragraphs 1 through 3 of this section;
(6) All waters adjacent to water identified in paragraphs 1 through 5 of this section, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters.
(7) All waters such as prairie potholes, Carolina bays and Delmarva bays, Pocosins, Western vernal pools, and Texas coastal praire wetlands where they are determined on a case by case basis to have a significant nexus to a water identified in paragraphs 1 through 3 of this section. These waters are similarly situated and shall be combined, for purposes of a significant nexus analysis, in the watershed that drains to the nearest water identified in paragraphs1 through 3 in this section. Waters identified in this paragraph shall not be combined with waters identifed in paragraph 6 of this section when performing a significant nexus analysis. If waters identified in this paragraph are also an adjacent water

as identified in paragraph 6, they are an adjacent water and no case-specific significant nexus analysis is required.

(8) All waters located within the 100-year floodplain of a water identified in paragraphs 1 through 3 of this section and all waters located within 4,000 feet of the high tide line or ordinary high water mark of a water identified in paragraphs 1 through 5 of this section where they are determined on a case-specific basis to have a significant nexus to a water identified in paragraphs1 through 3 of this section. For waters determined to have a significant nexus, the entire water is a water of the U.S. if a portion is located within the 100-year floodplain of a water identified in paragraphs1 through 3 or within 4,000 feet of the high tide line or ordinary high water mark. Waters identified in this paragraph should no be combined with waters identified in paragraph 6 of this section when performing a nexus anaysis. If waters identified in this paragraph are also an adjacent water under paragraph 6, they are an adjacent water and no case-specific significant nexus analysis is required.

Waters of the U.S. and wetlands as noted above are regulated by the USACE and EPA under Section 404 of the CWA and the Rivers and Harbors Act. The Clean Water Rule also describes what is not considered waters of the U.S. (e.g. most ditches). For more information on the Clean Water Rule, see the following web site: *http://www.epa.gov/cleanwaterrule*

Waters of the State

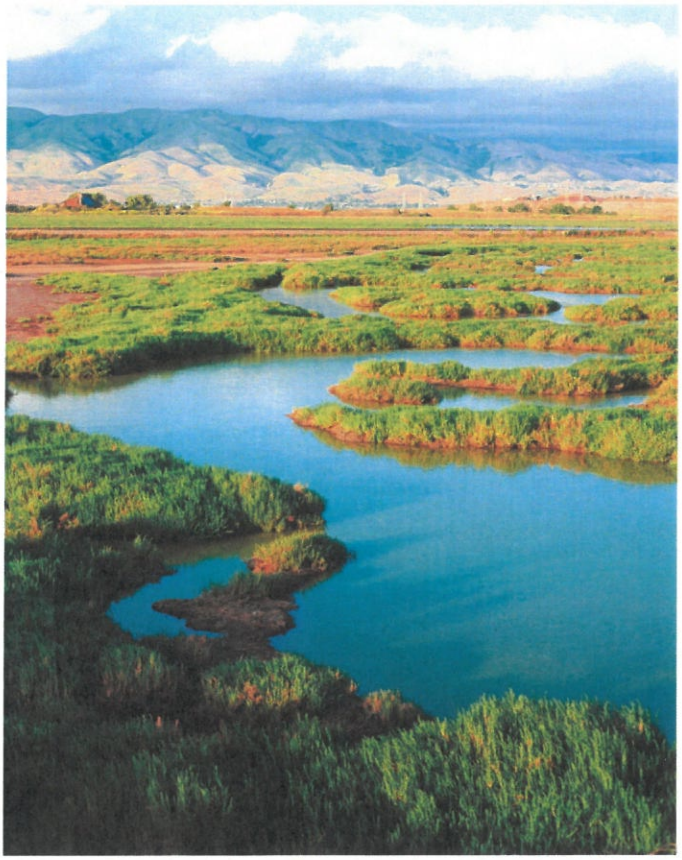
The California definition of waters of the state is any surface water or groundwater, including saline waters, within the boundaries of the state. Waters of the state and wetlands are regulated by the RWQCBs under the Clean Water Act (Section 401) and Porter Cologne Water Quality Control Act.

Riparian forests and woodlands are protected by the CDFW and are considered Waters of the state. The riparian zone is the area that surrounds a channel or lake and supports (or can support) riparian vegetation that is dependent on surface or subsurface water. Work in this zone should consider effects to at least to the outer (landward) edge of the drip line of the riparian vegetation.

Permitting a project that affects streams or wetlands

If a project affects an area where water flows, ponds or is present even part of the year, it is likely to be regulated by one or more agencies. Some wetland and riparian habitats never have surface water, but rely solely on groundwater, so can be dry all year. Water district environmental staff or a qualified biologist can assist water district staff to determine whether a regulated wetland, stream or associated resource is located at the site of interest. Ultimately, it is the resource agency with jurisdiction that determines the type and boundaries of protected habitats, and whether or not project activities require a permit.

There is a formal process to determining whether federal regulated waters and wetlands exist at any particular site (see *http://www.spn.usace.army.mil/Missions/Regulatory/JurisdictionDeterminations.aspx*). See Section 404 permit process starting on page 8 for additional information.



Example projects

The following are some examples of water district projects and the types of permits that may be required.

Flood protection or bank stabilization project

Flood protection projects can be defined as increasing channel capacity and reducing the standing water surface elevation in the channel instead of increasing the flood channel capacity. This can be accomplished in a number of ways including constructing or raising floodwalls, channel enlargement, levees and/or flood detention basins. However, environmental requirements prioritize natural flood protection methods, such as floodplains.

Activity	Required Permit or Environmental Document
Potential discharge of fill into or within a stream or wetland	Clean Water Act USACE Section 404 Permit and RWQCB Section 401 Water Quality Certification, RWQCB Porter Cologne Water Quality Control Act Waste Discharge Requirements
Alteration or modification of the bed, bank, or channel of a stream, including excavation and grading work and removal of existing riparian vegetation	CDFW Section 1602 Lake and Streambed Alteration Agreement, Clean Water Act USACE Section 404 Permit and RWQCB Section 401 Water Quality Certification, RWQCB Porter Cologne Water Quality Control Act Waste Discharge Requirements
If work would result in discharge of fill or dredged material or other waste materials in surface waters.	RWQCB National Pollutant Discharge Elimination System (NPDES) Permit
If work will affect any federally or state listed plant, fish, or wildlife species or their designated critical habitat	CConsultation with the USFWS, NMFS and/or the CDFW. Could potentially need a "biological opinion" or "take" permit from USFWS and/or NMFs and a Section 2081 Incidental Take Permit from the CDFW. See the Federal and State Endangered Species Act section on pages 15 and 16 for more information.

Habitat restoration

Restoration or enhancement of the natural aquatic, riparian, or wetland habitats within the floodplain of the stream or river.

Activity	Required Permit or Environmental Document
Potential discharge of fill from grading or site preparation activities below the plane of the ordinary high water mark or into existing wetlnands.	Clean Water Act USACE Section 404 Permit and RWQCB Section 401 Water Quality Certification RWQCB Porter Cologne Water Quality Control Act Waste Discharge Requirements
Alteration or modification of the bed, bank, or channel of a stream, including excavation and grading work and removal of existing wetland and riparian vegetation	CDFW Section 1602 Lake and Streambed Alteration Agreement
If work would result in discharge of fill or dredged material or other waste materials in surface waters.	RWQCB National Pollutant Discharge Elimination System (NPDES) Permit
If work will affect federally listed terrestrial plant or wildlife species or their designated critical habitat	Consultation with the USFWS, NMFS and/or the CDFW. Could potentially need a "biological opinion" or "take" permit from USFWS and/or NMFs and a Section 2081 Incidental Take Permit from the CDFW. See the Federal and State Endangered Species Act section on pages 15 and 16 for more information.

Vegation Management

Vegetation management in the stream corridor.

Activity	Required Permit or Environmental Document
If removal would be conducted using heavy machinery of any kind within the ordinary high water mark or wetlands.	Clean Water Act USACE Section 404 Permit and RWQCB Section 401 Water Quality Certification RWQCB Porter Cologne Water Quality Control Act Waste Discharge Requirements
If riparian vegetation, including invasive plants, would be removed within the riparian zone.	CDFW Section 1602 Lake and Streambed Alteration Agreement
If work would result in the discharge of pesticides, fill, or dredged material or other waste material into surface waters.	RWQCB National Pollutant Discharge Elimination System (NPDES) Permit
If work will affect federally listed plants and/or wildlife species or their designated critical habitat	Consultation with the USFWS, NMFS and/or the CDFW. Could potentially need a "biological opinion" or "take" permit from USFWS and/or NMFs and a Section 2081 Incidental Take Permit from the CDFW. See the Federal and State Endangered Species Act section on pages 15 and 16 for more information.

Primary permitting agencies and major permits required for work in streams and wetlands

The following sections are intended to help water district staff navigate the permitting process and get a better understanding of the agencies involved. There are various laws and regulations with different jurisdictions as noted in Table 1 on page 2, and separate permits are required from each resource agency. The primary permitting agencies include the United States Army Corps of Engineers (USACE), Regional Water Quality Control Board (RWQCB) and the California Department of Fish and Wildlife (CDFW). The United States Environmental Protection Agency (EPA) has regulatory authority over the USACE and may veto a Clean Water Act (CWA) permit. A permit from the San Francisco Bay Conservation and Development Commission (BCDC) is needed for work in tidal areas.

The permitting processes may change and it is always beneficial to check with the resource agencies to confirm the most recent application requirements and permit process.

In addition to the permitting requirements, compliance with the California Environmental Quality Act (CEQA) is required unless the project is exempt from CEQA. The National Environmental Policy Act (NEPA) may apply if the project has a federal partner, such as the USACE. District environmental staff can assist you with determining what level of environmental review would be required for your project. The CEQA documentation guidelines for the water district can be found in W520M02, Environmental Planning Guidance, Section 2 – CEQA Documentation Guidelines.

Based on the relvevant jurisdictional area, the following agencies may be consulted:

- United States Army Corps of Engineers – USACE administers the Federal Clean Water Act (CWA) and also authorizes projects that could impact waterways for navigation under the CWA and Rivers and Harbors Act. Section 10 of the Rivers and Harbors Act regulates work in tidal and navigable waters, such as Alviso Slough. The EPA has regulatory authority over the CWA and may review, or veto permits issued by the USACE.

  The National Oceanic Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) consult on projects through the Federal Endangered Species Act (FESA) in coordination with the USACE.

- Regional Water Quality Control Boards – The RWQCBs enforce state laws that protect water quality and its beneficial uses including all surface and groundwater. Depending on thelocation in the County, a project may be located under the jurisdiction of the San Francisco Bay Regional Water Quality Contol Board (e.g. San Jose to Palo Alto) or the Central Coast Regional Water Quality Contol Board (e.g. portions of south San Jose and south Santa Clara County, including the cities of Morgan Hill and Gilroy). The RWQCB has authority to issue CWA 401 Water Quality Certification for the EPA.

- California Department of Fish and Wildlife – The CDFW protects the stream areas and nearby habitat for wildlife. They also enforce the California Endangered Species Act (CESA).

- Bay Conservation and Development Commission - BCDC, a part of the Resources Agency, was created by the McAteer-Petris Act (Gov. Code 66600 et seq) in response to growing public concerns about the filling of San Francisco Bay. BCDC has authority for work undertaken in the Bay or within 100 feet of the shoreline including dredging & filling.

Section 404 Permitting

Section 404 of the CWA prohibits the unauthorized discharge of dredged or fill material into wetlands and other waters of the United States. The USACE's permit process under the CWA applies to all activities regulated under Section 404. Work typically regulated by this type of permit is done within the ordinary high water mark of streams or below the delineated boundary of a USACE jurisdictional wetland. See the appendix for examples.

The USACE issues four categories of permits under Section 404 to authorize the discharge of dredged or fill materials into waters of the United States, including streams and wetlands. The water district's goal is to select the project alternative which would result in the least amount of impact.

1) **Regional General Permits:** Regional General Permits (RGPs) are essentially permits that have already been written, regionally, for a small number of project categories. They are issued for recurring activities at a regional level (within a certain geographic area), such as maintenance activities with minimal environmental impacts. A RGP typically requires pre-approval from the RWQCB for a CWA, Section 401 Certification and from the USFWS and NMFS for FESA consultations, if necessary. For example, the water district's Stream Maintenance Program (SMP) has a RGP.

2) **Nationwide Permit (NWP)**: Projects that do not meet the criteria for a Section 404 RGP are usually processed as NWPs. The NWPs authorize activities that have minimial individual and cumulative adverse environmental effects. These types of projects have gone through the public review process, streamlining issuing a NWP. NWP standard categories are numbered and include projects such as bank stabilization, repairs to existing structures, flood control maintenance, and wetland restoration for wildlife habitat. There are approximately 52 different types of NWPs that have been approved by the USACE.

Pre-construction notification (letter describing the work) may be required by the USACE and Section 401 certification would be required from the RWQCB for certain NWPs. The SWRCB pre-issued CWA 401 Water Quality Certification for14 of the 2017 NWPs. It is critical that the project or activity match the applicable NWP as described and check the USACE San Francisco District web site for up-to-date NWPs, application or notification requirements. The USACE ultimately decides what type of permit applies. The remaining NWPs allow for a 45 day review period.

2017 NWPs:
http://www.spn.usace.army.mil/Missions/Regulatory/Regulatory-Overview/Nationwide/

CWA 401 Water Quality Certification of 2017 NWPs:
http://www.waterboards.ca.gov/water_issues/programs/cwa401/generalorders.shtml

3) **Individual Permits:** Individual Permits (IPs) are required for projects that have more extensive impacts to areas under USACE jurisdiction and do not fit within any of the standard NWP categories. Examples can include large flood control projects that exceed 0.5 acre of impacts to USACE jurisdiction. Projects that the USACE determines public review is necessary or where protected species may occur often require an IP. The IP permit process requires public review, a detailed application package, and typically takes 18 to 24 months. During the project design process, it is recommended to keep the timeframe in mind, and modify the project design elements to qualify under a NWP, if possible.

4) **Letter of Permission**: The LOP is an abbreviated version of an individual permit, which includes coordination with Federal and state fish and wildlife agencies, and a public interest evaluation, but without the publishing of an individual public notice. Therefore, the time frame for LOP approval is generally shorter than for an IP.

Permit process

Prior to initiating the Section 404 USACE permit process, the project team shall make every effort to look at project alternatives that avoid waters during the planning process. The water district's Natural Flood Protection (NFP) process can aid the project team in evaluating alternatives that avoid impacts to waters in order to select a project that is the least environmentally damaaging practicable alternative (LEDPA) prior to initiating the permit process.

To apply for a Section 404 USACE Permit, the following steps are recommended:

1) **Jurisdictional Wetland Delineation.** Prepare and submit to USACE a request for jurisdictional wetland delineation in accordance with USACE's minimum standards. The delineation shall be conducted to determine the extent of waters of the United States, including wetlands, within the project area. In addition to the project area, the delineation should include all locations in the proposed work footprint, access, and staging areas. When submitting the delineation report to USACE, verification of the delineation should be requested prior to preparation of an application for a permit.

2) **Project Description and Location Maps of the Project Area.** Based on the jurisdictional delineation and project plans, the project must be designed to avoid and minimize adverse effects to waters of the United States and wetlands to the maximum extent possible. Either the proposed work is exempt, can be authorized under a Nationwide Permit (NWP), or requires an Individual Permit (IP). It is important and required for an IP to document that the proposed project is LEDPA pursuant to Section 404(b)(1) through an alternative analysis. The alternatives analysis completed during the CEQA or NEPA supports evaluation of the LEDPA analysis for a CWA permit, if done adequately.

   Detailed maps shall be prepared showing the project area with a clear project boundary relative to a USGS topographic quadrangle or aerial photograph, including landmark information like street names or other features to identify the location. The USACE delineation data/ information on the maps should also be included if available. The USACE final map and drawing instructions can be found at:
   http://www.spd.usace.army.mil/Portals/13/docs/regulatory/standards/MapStand020816.pdf

3) **Interagency Meeting / Pre-application meeting.** The USACE holds a monthly interagency meeting on the second Wednesday of every month in the San Francisco District office for applicants to receive feedback on projects prior to submittal. Other representatives from local, state and federal agencies are invited so that they can provide feedback on the proposed project. A proposed project may schedule its own pre-application consultation with the USACE with other resource agencies invited as desired. Pre-application meetings are highly recommended to define the project's alternatives assessment, design, impacts avoidance and minimization measures, mitigation requirements and options, and other related details. Be prepared to request and accept constructive feedback on all aspects of the work with the common goal of environmental compliance. Productive pre-application meetings identify issues to address, permit needs, and can substantially improve the permit application process.

4) **Section 404 Permit Application.** The Section 404 permit requires the water district's address and contact information for the water district's agent; statement of authorization; project description, which includes the name of the water body, project location, directions to the site, nature of activity, project purpose, etc.; reason for and type of discharge; total surface area in acres of wetlands and other waters filled; description of avoidance, minimization, and compensation (mitigation) for unavoidable impacts; addresses of adjoining property owners; and list of other certifications of approvals/denials received from other federal, state, or local agencies.

If a project has the potential to result in adverse effects to federally listed species under a Section 404 permit, USACE is obligated to conduct consultation with USFWS and NMFS, if applicable depending on the species. Consultation can be expedited if you prepare a biological assessment for USACE to submit to USFWS and NMFS, as applicable. See the Federal Endangered Species section on page 15 for more information.

A cultural resources and historic properties record search, surveys, and consultation with appropriate Native American representatives would also be required as part of USACE's requirement to comply with Section 106 of the National Historic Preservation Act.

Timeline

The Section 404 regulations include timelines for USACE staff to issue Section 404 permits. However, the timelines vary as there are many factors that can affect the time it takes to receive a Section 404 permit. Typically, the water district can expect a Section 404 permit to be issued by USACE within 24 months after USACE acknowledges receipt of a complete permit application. This timeline depends greatly on whether consultation with other agencies (e.g., USFWS, State Historic Preservation Officer) is required for the project. For Nationwide or Regional General Permits, the timeline is typically on the shorter end of the spectrum. Individual Permits typically take the longest to approve.

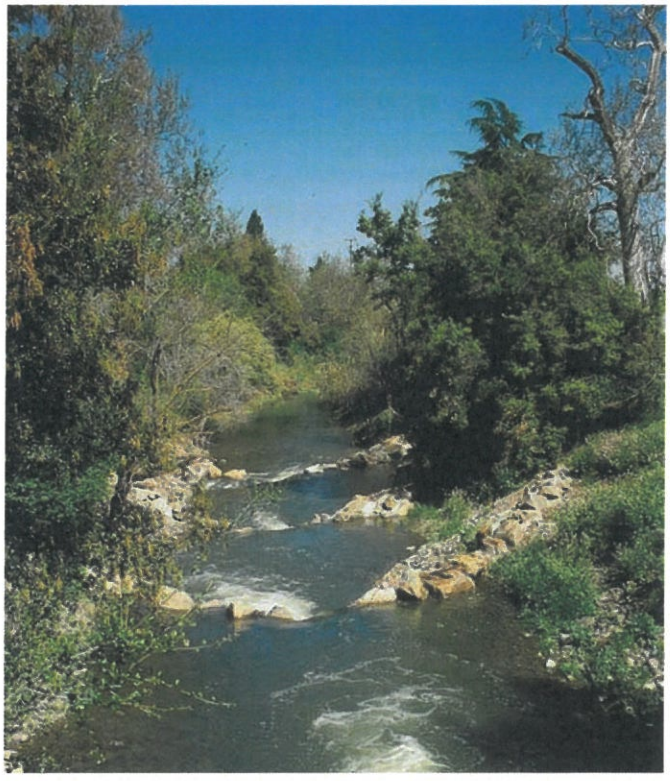
Other approvals

Receipt of RWQCB 401 Certification is required before NWP/IP issuance for most projects. Work that does not require CWA Section 401 Certification may have Waste Discharge Requirements (WDR) under Porter-Cologne. Therefore, a permit from the applicable RWQCB may still be necessary. Consultation with USFW and NMFS may also be necessary if the project would result in take of an endangered species. If a project is located in the Coastal Zone, consistency with the Coastal Act would also be required.

Emergency procedures

An emergency is defined by the USACE as a "clear, sudden, unexpected, and imminent threat to life or property demanding immediate action to prevent or mitigate loss of, or damage to life, health, property, or essential public services."

The San Francisco District of the USACE has re-issued the Department of the Army Regional General Permit (RGP) 5 to authorize fill and dredging activities and work associated with the repair and protection of structures and property threatened with damage during emergency conditions. This RGP has been re-issued under the authority of Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. This RGP will now expire on August 31, 2019.
In order for a project to qualify for authorization under the this RGP, the water district must comply with the this RGP, the water district must comply with the General Conditions specified for the RGP. General Conditions specified for the RGP.



Clean Water Act Section 401 Water Quality Certification and/or Water Discharge Requirements

If a water district project requires a USACE Section 404 Permit that could cause discharge of dredged or fill material into waters of the U.S., then a RWQCB 401 Certification from the RWQCB is also required. Section 401 of the federal CWA specifies that states must certify that any activity subject to a permit issued by a federal agency, such as the USACE, meets all the state water quality standards. In California, the state and regional water boards are responsible for Water Quality Certification (WQC) of activities subject to USACE Section 404 Permits.

Although WQC should be sought for the same effects to waters of the United States as indicated in a Section 404 permit, certification can also cover effects to water bodies that are not USACE jurisdictional (i.e., isolated wetlands) that are considered waters of the state. These are situations where the Waste Discharge Requirements (WDR) applies. Water Quality Certification is typically valid for five years.

Permit process

The following steps are typically required to apply for Section 401 Water Quality Certification.

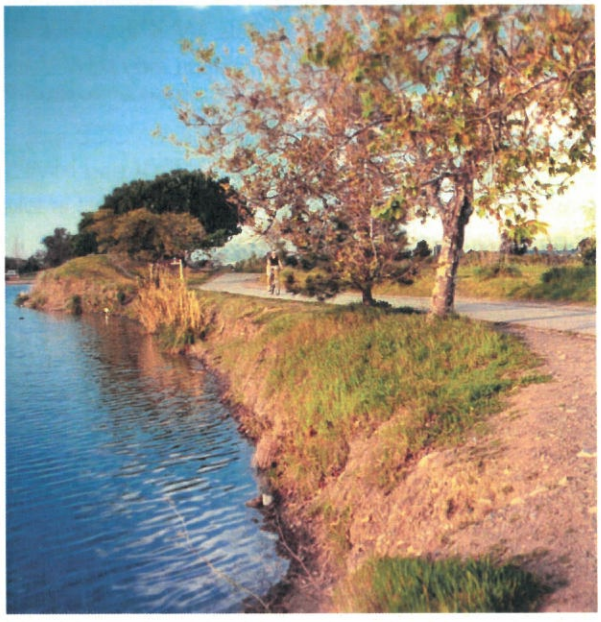
1) **Pre-Application Meeting.** A pre-application meeting with the RWQCB is recommended prior to initiating the application process.

2) **Jurisdictional Wetland Delineation.** Submit to the RWQCB a copy of the report request for jurisdictional delineation of waters of the United States, including wetlands, that is prepared for USACE, and the USACE letter of approval with figure defining the CWA jurisdictional areas, if/when available. The delineation should be conducted to determine the extent of waters of the United States, including wetlands, within the project area. RWQCB also takes jurisdiction of surface waters or waters of the state that are outside of the jurisdiction of USACE. Therefore, the wetland delineation shall cover all surface water features within the project area.

3) **Project Application.** An application shall be submitted that includes a detailed written description of the project. The project description shall include the project features and activities and proposed construction methods in detail (e.g., information regarding the location, project features and activities, equipment and materials needed for activities, access to the site, and schedule of activities, etc.).

4) **Project Location Map.** Project location maps of the project site shall be prepared showing the project site with a clear project boundary relative to a USGS topographic quadrangle or aerial photograph, including landmark information like street names or other features to identify the location. For the RWQCB mapping and figure standards visit: *http://www.waterboards.ca.gov/lahontan/water_issues/programs/clean_water_act_401/docs/att1.doc*

5) **Section 401 Permit Application.** With submittal of the Section 401 application form, RWQCB requires copies of the applications for a CDFW LSA and USACE Section 404 permit, a copy of the wetland delineation (if verified, the USACE verification letter, otherwise the delineation report),



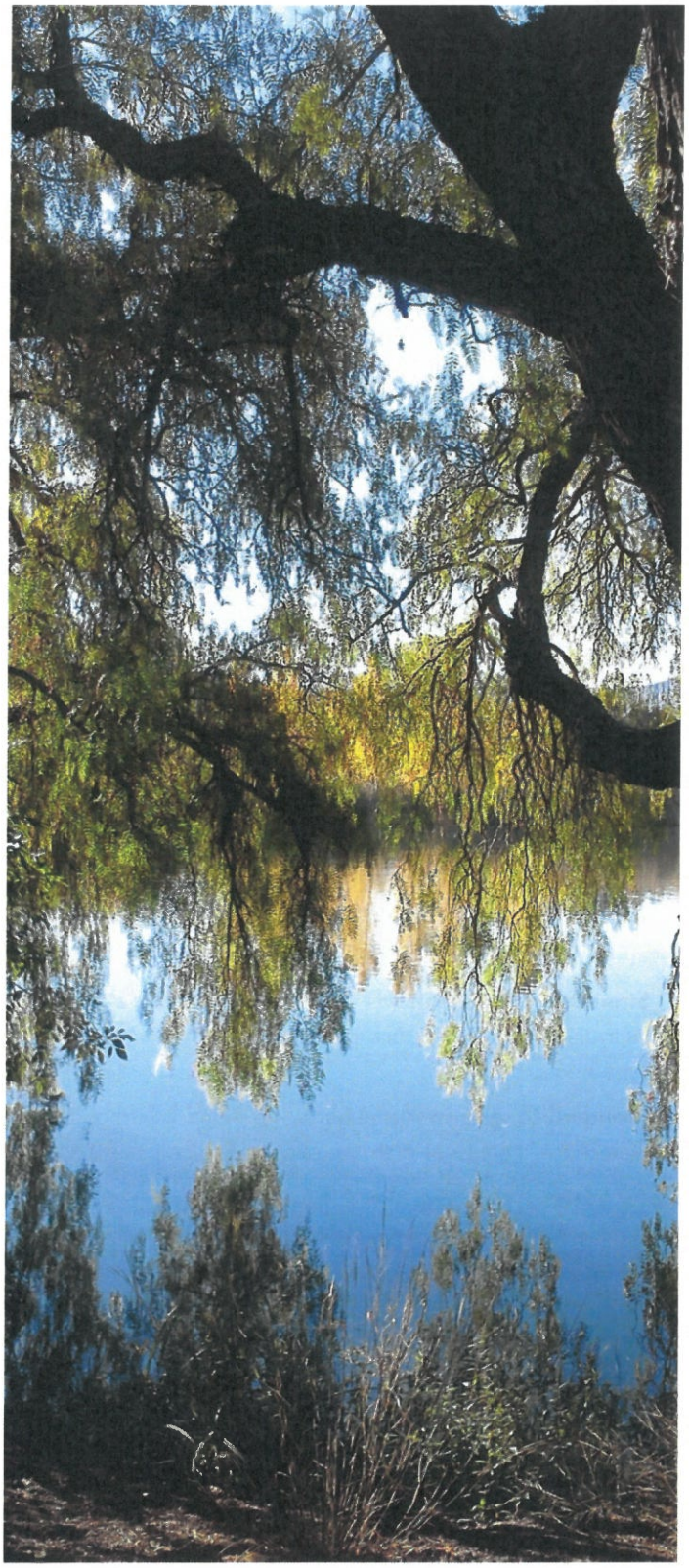
and a copy of any CEQA document prepared for the project. If the CEQA/NEPA document has not yet been certified or adopted, a copy of the most completed version of the document may suffice.

The application shall include the following: applicant information; project description, including the project purpose, activities, and schedule; complete project site description; detailed description of impacted water bodies, including temporary and permanent acreage impacts to streambed, wetland, riparian habitat, lake/reservoir, and ocean/estuary/bay, acres of wetlands determined by the USACE to be jurisdictional and those beyond jurisdictional, dredge and fill amounts (cubic yards), and amount of material proposed to be dredged and/or filled in waters and wetlands (if applicable); water quality sampling information; dewatering information; waste discharge; federal licenses/permits; CEQA or NEPA documentation.

Timeline

Section 401 Water Quality Certification can typically be expected within 90 days of submittal of the application. However, the application requires detailed information and design plans, and must be considered complete by the RWQCB, so it is the water district's experience that the application process takes much longer.

Within 30 days of submittal of the application, RWQCB will send the applicant a letter stating that the RWQCB has examined the application and is considering it either complete or incomplete. If the application is determined to be incomplete, the letter will state the items required for completion. These items must be submitted to RWQCB for the application to be considered complete and ready for processing. Once the application is considered complete, RWQCB has 60 days to issue the certification.



California Department of Fish and Wildlife Lake and Streambed Alteration Agreement (LSA)

Sections 1600 – 1616 of the California Fish and Game Code, regulates activities that would alter the flow, bed, banks, channel, or associated riparian areas of a river, stream or lake, which are considered "waters of the state." The law requires the water district to notify the CDFW before beginning an activity that will substantially modify a river, stream or lake.

Permit triggers

An LSA is triggered when a water district project involves altering a stream or disturbing riparian vegetation, including but not limited to substantially altering the natural flow of a river, stream or lake; using any material from these areas; disposing of waste where it can move into these areas; and/or removing trees of vegetation from the riparian corridor.

Permit types

There are several types of "standard" LSAs authorized by CDFW. The water district generally utilizes the Standard Agreement, Standard Long-Term Agreement, and the Routine Maintenance Agreement.

- **Standard Agreement.** The Standard Agreement is for activities expected to take place within a five year time frame.
- **Standard Long-Term Agreement.** The Standard Long-Term Agreement is for activities expected to continue past a five-year timeframe.
- **Routine Maintenance Agreement.** Routine Maintenance Agreements cover multiple routine maintenance projects that an agency will complete at different time periods during the term of the agreement; and describes a procedure the agency must follow for any maintenance projects the agreement covers. For example, the water district utilizes the Routine Maintenance Agreement for the SMP.

Permit process

The following steps are typically required during the Section 1602 permit process:

1) **Plant and Wildlife Surveys.** Plant and wildlife surveys shall be conducted, including surveys for federally listed and state-listed species, and an assessment of riparian habitat (including quantification of riparian habitat).

2) **Assessment of the Extent of Streams/Rivers and/or Lakes.** An assessment of the extent of streams, rivers, and/or lakes within the project area shall be submitted to CDFW. Any delineation of waters of the United States shall also be sent to CDFW if it has been conducted. If a delineation has not been conducted, the extent of streams, rivers, and/or lakes within the subject area shall be submitted as maps to the CDFW.

3) **Project Description.** A written project description that addresses the project features, activities and proposed construction methods (e.g., location of the activities, project features and activities, how the activities will be conducted, equipment and materials needed, access to the project site, and the schedule of activities).

4) **Location Maps.** Maps shall be prepared showing the project site with a clear project boundary relative to a USGS topographic quadrangle or aerial photographs, including landmark information like nearest city, street names or other features to identify the location. Include the USACE delineation information on the maps if available. Map standards are referenced on pages 3 and 5 of the LSA application.

5) **Prepare the Section 1602 Streambed Alteration Notification Application.** Along with the application form, CDFW requires copies of the applications

for RWQCB Water Quality Certification and a USACE Section 404 permit, a copy of a biological evaluation (based on the surveys conducted) including the assessment of riparian habitat located in the subject area, and a copy of any CEQA document prepared for the project. CDFW typically accepts a copy of the Notice of Determination (NOD) on the CEQA document. If the CEQA document has not yet been certified or adopted, a copy of the draft document may suffice.

Timeline

A LSA can typically be expected within 90 days of submittal of the application depending on the complexity of the project. Within 30 days of submittal of the application, CDFW will send a letter stating that CDFW has examined the application and is considering it either complete or incomplete. If the application is determined to be incomplete, the letter will state the items required for completion. These items must be submitted to CDFW for the application to be considered complete and ready for processing. Once the application is considered complete, CDFW has 60 days to issue a draft agreement.

Other common permits and approvals

In addition to the three common permits involved for project activities in streams and wetlands (CWA Sections 404 and 401 (or WDR), California Fish and Game Code LSA), this section provides an overview of other permits and approvals that may be required depending on location of the site and type of work proposed.

Federal Endangered Species Act

Either a Section 7 Consultation or a Section 10 Incidental "Take" Permit will be required if a project has the potential to positively or negatively affect listed or protected species or their habitats, either directly or indirectly. Take is defined as "harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting, or to attempting to engage in any such conduct. " The processes for both Section 7 and Section 10 Consultation are long and complex. The USFWS is the agency that administers these permits. However, if anadromous species (species that migrate between marine and freshwater environments) are involved then the NMFS administers the permit. For example, steelhead *(Oncorhynchus mykiss)* is a federally threatened anadromous fish protected by NMFS that is found in Coyote Creek, Guadalupe River, Stevens Creek, San Francisquito Creek, Uvas-Carnadero Creek, Llagas Creek, Pajaro River, and many of their tributaries.

Permit triggers and process

As part of the CEQA compliance, the presence of federally protected plant or animal species would most likely be identified in biological surveys. When species are found, the water district coordinates with USFWS or NMFS as soon as possible and looks at project design alternatives that would minimize impacts on the species.

When proceeding with the project, one of the following would be required:

- A Section 7 Consultation is triggered when the project has a "federal nexus," usually in the form of another federal permit or federal funding at some stage of the project, and with any federal agency. For example, federal nexus is with the USACE, if a CWA Section 404 permit is required. Consultation will be either informal or formal, depending on whether your project affects listed or protected species. Section 7 consultations are easier to complete than Section 10, so having a federal nexus for a project is preferred.

- A Section 10 Permit is triggered when the project has no federal nexus (USFWS or NMFS is the only federal connection to the project). For example, some of the main triggers for a NMFS formal Section 7 Consultation on a project where a listed or protected anadromous species is present could include:

  o Working in or near a stream channel
  o Diverting water in a stream channel
  o Catching and relocating steelhead
  o Grouting rip-rap

Note that these types of projects or activities would not involve dredging or filling waters or wetlands, so may not require a CWA Section 404 permit. Thus, there is no federal nexus with the USACE allowing Section 10 consultations.

Timeline

The Section 7 and Section 10 process are very complex and involve multiple steps. A Section 7 consultation must be processed in a maximum of 135 days. The USACE or partner providing the federal nexus leads or manages Section 7 consultations with USFWS and NMFS. A Section 10 Permit has no mandated time limit and may take 1½ years or longer. As with other permits, information provided about the project must be considered complete or adequate to issue a Biological Opinion. The timeline begins when the application materials are considered complete or sufficient by the resource agency.

State Endangered Species Act

Water district activities that would result in adverse effects to state-listed species would be subject to "take" authorization of the California Department of Fish and Game Code. "Take" authorization from CDFW is required when take of a state-listed species occurs. Take, under the California Endangered Species Act (CESA), is defined as "to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill."

There are two types of consultation with CDFW regarding state-listed species:

- In some cases, a project may affect a species that is listed by both the federal Endangered Species Act (FESA) and the CESA. It is CDFW's responsibility to determine whether take of the species will occur or not. If the USACE initiated consultation with USFWS/NMFS and the project will affect species that are both federally and state listed, a copy of the BA and CEQA document shall be submitted to CDFW requesting CESA coordination.

  If CDFW determines that take will not occur, a letter of concurrence will function as their CESA determination. If CDFW determines that take will occur, then a consistency determination (pursuant to Fish and Game Code 2080.1) or application for a take permit (pursuant to Fish and Game Code 2081) would be required.

- If the project will affect a species that is state listed only, consultation under the CESA would need to be conducted with CDFW . Under this consultation, an incidental take permit from CDFW (pursuant to Fish and Game Code Section 2081) would be required if the project may result in take of a state-listed species. A copy of the biological evaluation should be sent to CDFW and a request for consultation (i.e. to discuss the project with a CDFW biologist) on the project. Learn more about CESA consultation and state incidental take permits by reviewing references on page 24.

Consultation Triggers and Process

For CESA consultation, the following steps are typically taken:

- Prepare and submit the CEQA document for the project and a biological evaluation to CDFW (If going through consultation with USFWS/NMFS, submit a copy of the Biological Assessment (BA) to CDFW). The biological evaluation typically includes information on the location of the project, a description of the project that covers the project activities and proposed construction methods in detail (e.g., what the activity will consist of, how the activity will be done, what equipment and materials will be needed for the activity, how access to the site will be achieved, and the activity schedule), the existing environmental setting, accounts of the species that may be affected by the project, an evaluation of the effects of the project on those species, and measures to avoid, minimize, and mitigate the effects.

Timeline

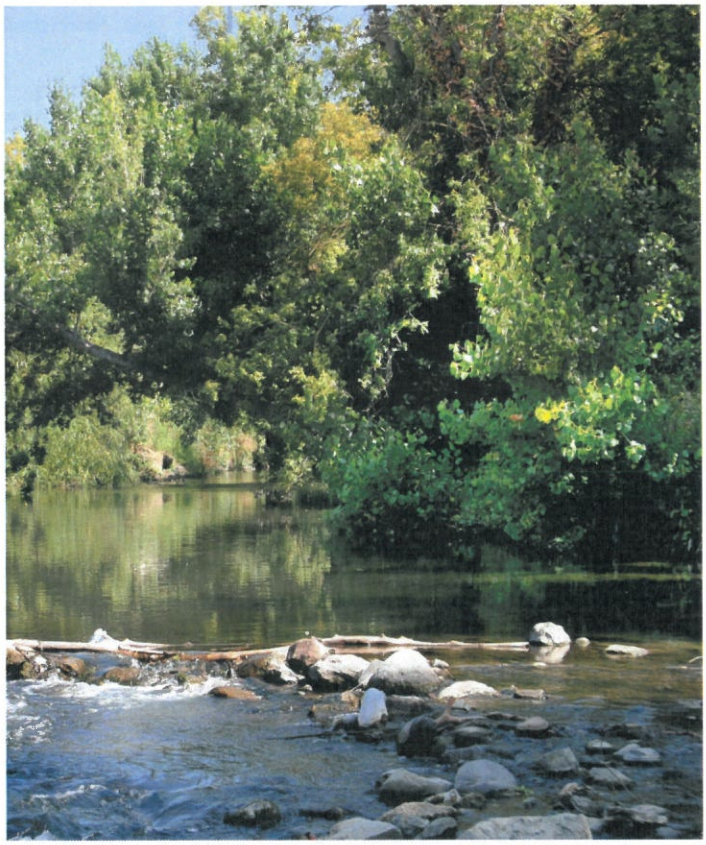
Typically, a request for Consistency Determination can be concluded within 30 days of CDFW's receipt of the USFWS/NMFS Biological Opinion and request for Consistency Determination. For consultation leading to a state incidental take permit, this process can take up to 120 days, which includes 30 days to determine that the application for a take permit is complete and 90 days after CDFW determines the application is complete to process and issue the permit.

Santa Clara Valley Habitat Plan (VHP)/ Natural Community Conservation Plan (NCCP)

The Santa Clara VHP/NCCP provides the water district, as well as other local partners and permittees with endangered-species permits for VHP species on specific covered activities within the boundaries of the VHP. The VHP removes the need to obtain approval from USFWS and CDFW and reduces the number and scope of required biological studies. To determine if your project is located in the boundaries of the VHP and is a covered activity, review the Santa Clara VHP at the following web site: *http://scv-habitatagency.org/178/Santa-Clara-Valley-Habitat-Plan*

Regional Water Quality Control Board National Pollutant Discharge Elimination System (NPDES) Permit (Section 402 of the CWA)

Activities subject to Section 402 of the CWA nclude any activity that would result in the discharge of waste into waters of the United States. The NPDES Construction General Permit covers the discharge of storm water from construction activities that would disturb more than one acre. However, for projects located under the jurisdiction of the San Francisco Bay RWQCB, construction activities that disturb less than one acre may trigger a Construction General Permit under the NPDES Municipal Regional Permit (MRP).



Permit Process

The following would be required for a NPDES permit:

1) **Storm Water Pollution Prevention Plan (SWPPP).** A SWPPP is a plan which specifies the Best Management Practices (BMPs) that will be implemented by the water district to ensure that pollutants, including sediment, generated by project activities do not enter receiving water bodies via storm water runoff or discharges.

2) **Notice of Intent (NOI).** A NOI shall be prepared by the water district stating that the water district will comply with and implement all conditions and measures set forth in the statewide General Permit for Storm Water Discharge Associated with Construction Activities. The NOI is found as an attachment to the General Permit.

Submit the NOI, SWPPP, and fee to either the Central Coast or San Francisco Bay RWQCB

Timeline

Once the NOI, SWPPP, and check have been submitted to the appropriate RWQCB, the project can be considered as authorized by the Construction General Permit, so long as the project activities are in compliance with the terms and conditions of the permit.

San Francisco Bay Conservation and Development Commission (BCDC)

The BCDC has regulatory authority over development in San Francisco Bay and along the Bay's nine-county shoreline. BCDC is guided in its decisions by its law, the McAteer-Petris Act, the San Francisco Bay Plan, and other plans for specific areas around the Bay. A permit is required from BCDC if work is being undertaken in the Bay or within 100 feet of the shoreline, including filling, dredging, shoreline development and other work. There are several different types of permit applications, depending on the size, location, and impacts of a project.

Permit triggers

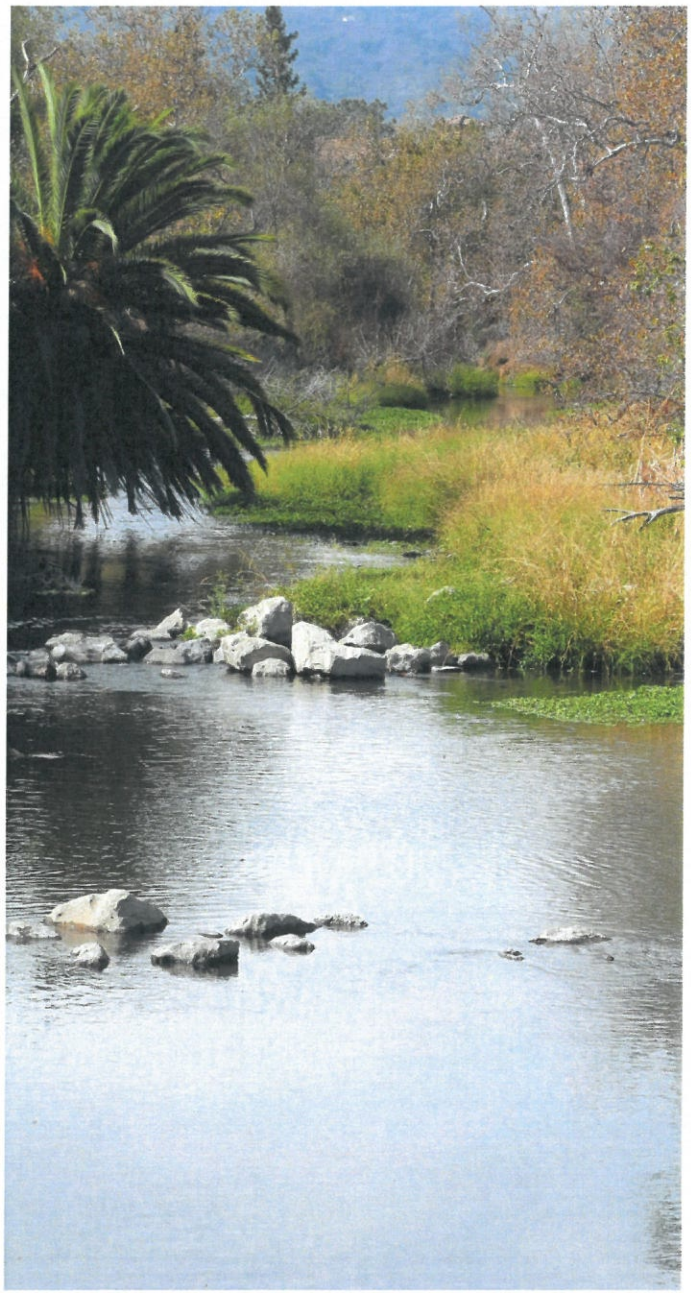
The BCDC regulates projects or activities that place solid material, build or repair docks, pile-supported or cantilevered structures, dispose of material or moor a vessel for a long period in San Francisco Bay or in certain tributaries that flow into the Bay, dredge or extract material from the Bay bottom, substantially change the use of any structure or area, construct, remodel or repair a structure, or subdivide property or grade land.

Permit process

To get a BCDC permit, you need to complete an application form (which requires detailed project information and plans) and pay a processing fee. The application must be submitted by the owner of the project site or the owner's representative (architect, attorney, contractor, etc.).

Timeline

Once the application is completed, by law the BCDC must grant or deny the permit within 90 days unless the applicant agrees to extend this period. Most applications are processed within five to eight weeks.



Joint Aquatic Resource Permit Application

This Joint Application (JARPA) may be used to apply for a variety of projects that take place along the San Francisco Bay and coastline, including projects near or in wetlands or creeks that flow to the Bay. In most cases, a project in such a location involves permitting from a variety of agencies. A single JARPA document is designed to be used in place of individual applications for state, federal and some regional agencies; therefore, making the application process more clear and consistent. A completed JARPA must be submitted directly to each agency with jurisdiction over the project. The JARPA application instructions can be found here: *http://www.bcdc.ca.gov/forms/forms.html*

Contact references

U.S. Army Corps of Engineers
San Francisco District
Regulatory Division
1455 Market Street, 16th Floor
San Francisco, California 94103-1398
Tel: (415) 503-6795
Fax: (415) 503-6693

San Francisco Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612
Tel: (510) 622-2300
Fax: (510) 622-2460

Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA. 93401-7906
Tel: (805) 549-3147
Fax: (805) 543-0397

California Department of Fish and Wildlife
7329 Silverado Trail
Napa, CA 94558
Tel: (707) 944-5500
Email: *askbdr@wildlife.ca.gov*

San Francisco Bay Conservation and Development Commission
455 Golden Gate Avenue, Suite 10600
San Francisco, CA 94102-7019
Tel: (415) 352-3600
Fax: (415) 352-3606
Email: *info@bcdc.ca.gov*

National Oceanic and Atmospheric Adminstration (NOAA), National Marine Fisheries Service (NMFS)
777 Sonoma Avenue, Room 325
Santa Rosa, CA 95404
Tel: (707) 575-6050

Website references

EPA and USACE, Clean Water Rule:
http://www.epa.gov/cleanwaterrule

USACE Application for a Section 404 Permit:
http://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Obtain-a-Permit/

USACE San Francisco District Nationwide Permit Program:
http://www.spn.usace.army.mil/Missions/Regulatory/Regulatory-Overview/Nationwide/

USACE San Francisco District Jurisdictional Determinations and Wetland Delineations:
http://www.spn.usace.army.mil/Missions/Regulatory/Jurisdiction-Determinations/

U.S. Environmental Protection Agency Section 404 of the Clean Water Act Permitting Information:
https://www.epa.gov/cwa-404

RWQCB, Dredge/Fill (401) and Wetlands Program:
http://www.waterboards.ca.gov/water_issues/programs/cwa401/

RWQCB Section 401 Water Quality Certification Application Form:
http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/401_certs/401_app_e-form_apr05.doc

Website references

SWRCB, CWA 401 Water Quality Certification of 2017 NWPs:
http://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/generalorders/nwp_go.pdf

CDFW Lake and Streambed Alteration Agreement Notification Forms, Instructions and Fees:
https://www.wildlife.ca.gov/Conservation/LSA/Forms

San Francisco Bay Conservation and Development Commission (BCDC):
http://www.bcdc.ca.gov/

Santa Clara Valley Habitat Plan (VHP)/Natural Community Conservation Plan (NCCP)
http://scv-habitatagency.org/178/Santa-Clara-Valley-Habitat-Plan

Appendix

Figure 1. California Dept. of Fish and Wildlife Jurisdiction

CDFW Jurisdiction: Bed, bank and channel of rivers, lakes and streams to landward edge of riparian vegetation

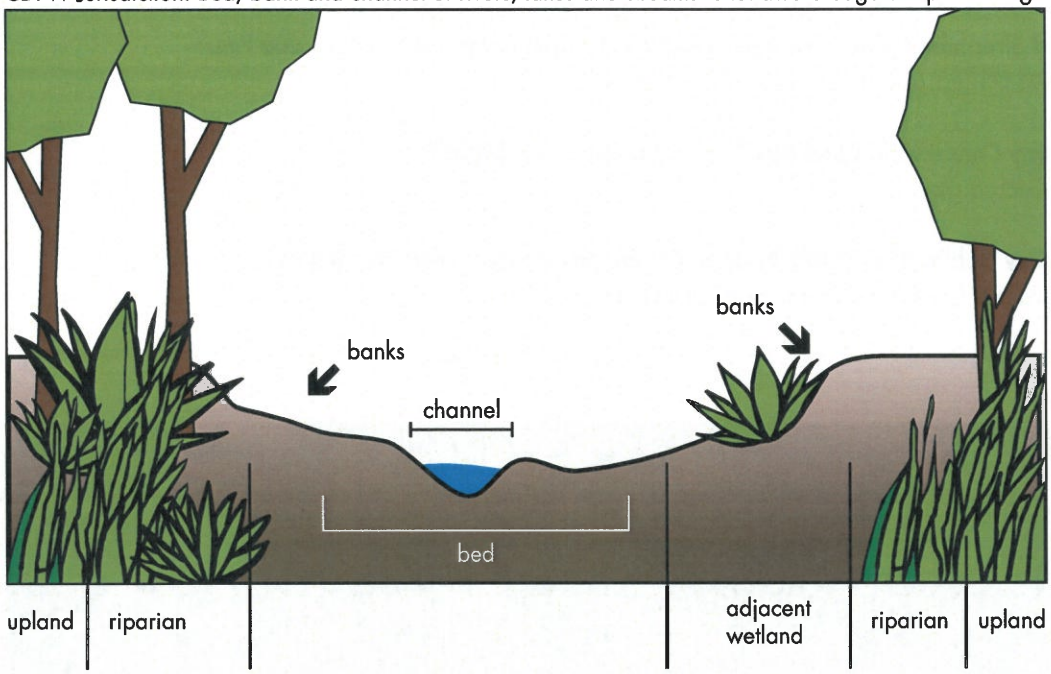


Figure 2. U.S. Army Corps of Engineers Jurisdiction

USACE Jurisdiction: Below plane of ordinary high water mark and adjacent wetlands

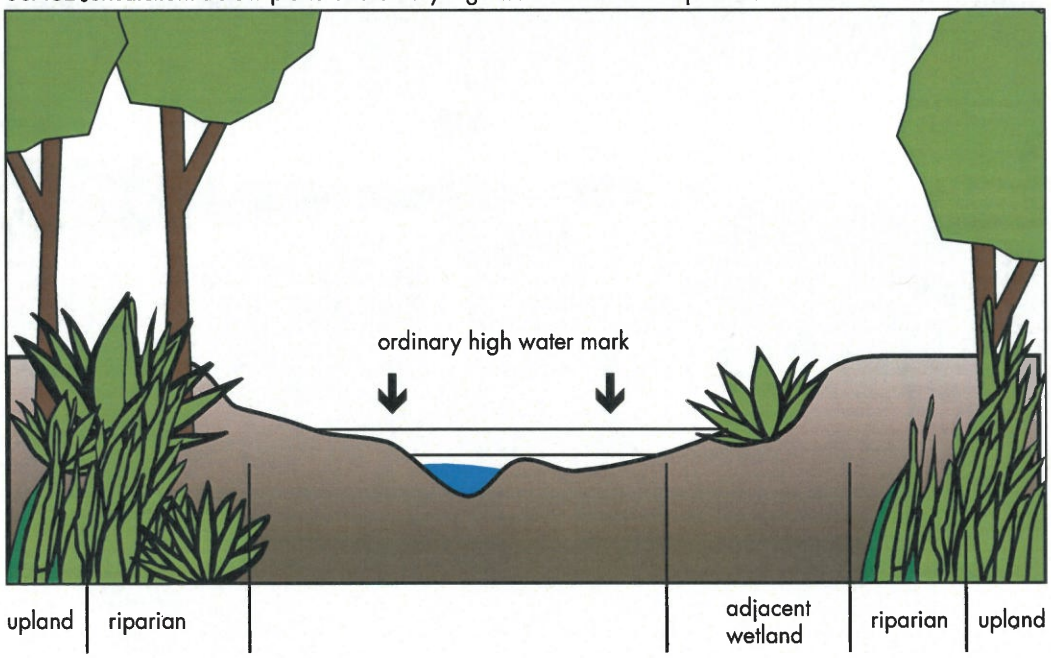
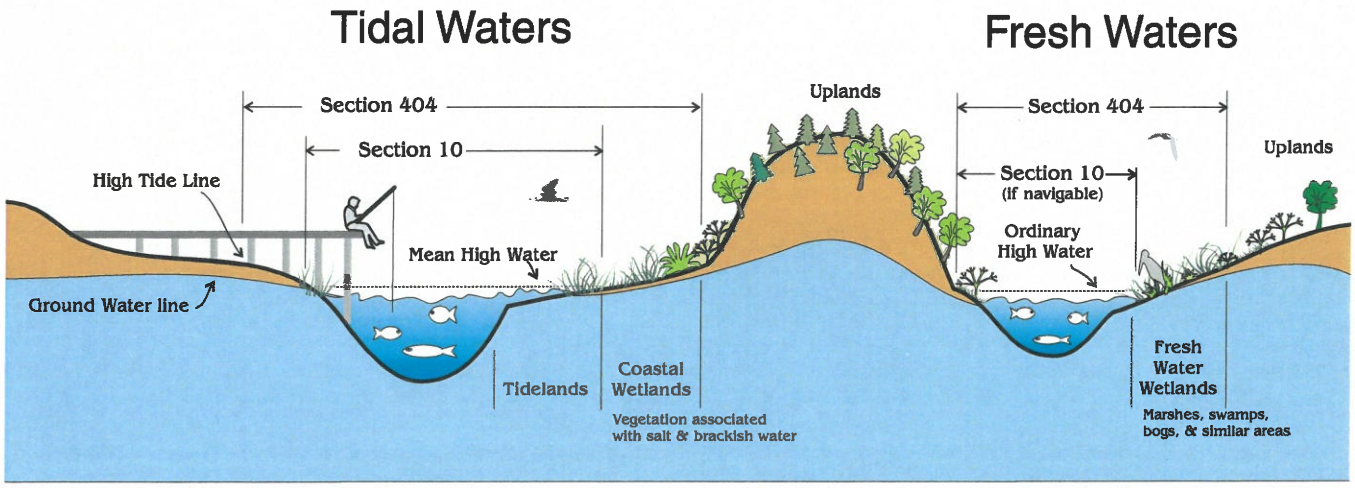


Figure 3. Corps of Engineers Regulatory Jurisdiction



	Section 103 Ocean Discharge of Dredged Material	**Section 404** Disposal of Dredged or Fill Material (all waters of the U.S.)	**Section 10** All Structures and Work (navigable waters)
Typical examples of regulated activities	Ocean discharges of dredged material	All filling activities, utility lines, outfall structures, road crossings, beach nourishment, riprap, jetties, some excavation activities, etc.	Dreding, marinas, piers, wharves, floats, intake / outtake pipes, pilings, bulkheads, ramps, fills, overhead transmission lines, etc.

Source: USACE

Acronyms

BA – Biological Assessment

BO – Biological Opinion

BMPs – Best Management Practices

BCDC – San Francisco Bay Conservation and Development Commission

CESA – California Endangered Species Act

CEQA – California Environmental Quality Act

CDFW – California Department of Fish and Wildlife

CWA – Clean Water Act

FESA – Federal Endangered Species Act

JARPA – Joint Aquatic Resource Permit Application

LSA – Lake and Streambed Alteration Agreement

MRP – San Francisco Bay Regional Water Quality Control Board Municipal Regional Permit

NEPA – National Environmental Policy Act

NOAA – National Oceanic and Atmospheric Administration

NOI – Notice of Intent

NOD – Notice of Determination

NPDES – National Pollutant Discharge Elimination System

NWP – Section 404 Nationwide Permit

RWQCB – Regional Water Quality Control Board

RGP – Section 404 Regional General Permit

SWPPP – Stormwater Pollution Prevention Plan

USACE – United States Army Corps of Engineers

USFWS – United States Fish and Wildlife Service

WQC – Water Quality Certification

WDR – Waste Discharge Requirements

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INCOMING BOARD CORRESPONDENCE

Report Name: Correspondence (open)

Correspond No	Rec'd By District	Rec'd By COB	Letter To	Letter From	Description	Disposition	BAO/ Chief	Staff	Draft Response Due Date	Draft Response Submitted	Writer Ack. Sent	Final Response Due Date
C-19-0265	12/01/19	12/02/19	All	SCHULTHEIS SCHULTHEIS	Email from David Schultheis regarding debris and blockages in the Guadalupe Creek between Camden Avenue and Almaden Expressway.	Refer to Staff	Richardson	Tippets	12/10/19		n/a	12/16/19
C-19-0267	12/02/19	12/03/19	All	CRAIG LARSEN	Email from Craig Larsen to Directors Santos and Keegan regarding Homeless Encampment Trash in San Tomas Aquino Creek and Saratoga Creek in Santa Clara.	Refer to Staff	Richardson	Tippets	12/11/19		n/a	12/17/19