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To: California Congressional Delegation  
From: California State Association of Counties

June 8, 2011

**RE: *Flood Control Facility Maintenance Clarification Act – Original Cosponsorship Request***

The California State Association of Counties (CSAC) strongly encourages you to join Representative Gary Miller as an original cosponsor of his bill to streamline the Clean Water Act's (CWA) Section 404 permitting process. Specifically, the bill – the *Flood Control Facility Maintenance Clarification Act* – would provide a narrow exemption for maintenance removal of sediment, debris, and vegetation from flood control channels and basins, effectively clarifying the original intent of Congress.

Under Section 404 of the CWA, counties, local flood control agencies, and similar local government agencies in California and across the country are required to obtain permits from the U.S. Army Corps of Engineers (USACE) to perform maintenance activities in flood protection facilities. The law also provides an exemption for “maintenance of currently serviceable structures.” However, the USACE has interpreted that this exemption does NOT apply to certain routine maintenance activities.

This narrow interpretation has caused a number of unintended consequences. For one, it has drastically increased the Corps' workload, creating a significant backlog. The processing time for a 404 permit takes anywhere from one to three years, and often comes with costly mitigation conditions attached. It also has hampered local agencies in their efforts to perform routine maintenance in a timely and responsive manner, leaving them open to undue liability for flood damage.

Predictable, timely, and cost-effective maintenance of flood protection infrastructure is critical to sustaining the safety and economic viability of the nation's communities. A cumbersome permitting process delays critically important maintenance activities, putting the nation's flood protection infrastructure, and the communities it protects, at unnecessary risk. Clarifying the CWA to provide an exemption for maintenance removal of sediment, debris, and vegetation from flood control channels and basins would allow local agencies to provide for public safety without compromising environmental protection.

Again, CSAC urges you to become an original cosponsor of the *Flood Control Facility Maintenance Clarification Act*. For more information on the bill or to sign on as a cosponsor, please contact Sandra Bitter or Justin Law with Representative Gary Miller at [sandra.bitter@mail.house.gov](mailto:sandra.bitter@mail.house.gov) / [justin.law@mail.house.gov](mailto:justin.law@mail.house.gov) (202-225-3201).

For additional information regarding CSAC's position on this matter, or if you have any questions, please feel free to contact me. Thank you.

Joe Krahn  
CSAC Washington Representative  
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## **Examples of Section 404 Permit Processing Delays in CA**

### ***Orange County***

It took Orange County three years to obtain a Section 404 permit to clear riparian growth from a channel bottom, which was reducing the flood protection capacity of the channel. As a condition of receiving the permit, the County was required to provide 43 acres of mitigation at a cost of \$2.8 million, as compared to the cost of the riparian removal, which was \$700,000.

### ***Alameda County***

The Alameda County Flood Control District's 404 permit application for the removal of sediment from flood control channel Line N/N-1 in District Zone 6 was still not approved after six years pending resolution of a mitigation demand for temporal project impacts.

### ***Butte County***

A typical 404 permit process in Butte County takes over one year. For example, the Lower Wyandotte/Monte Vista Avenue proposal took 13 months to be processed and was subject to a \$9,450 mitigation requirement for .063 acres of seasonal emergent wetlands.

### ***San Bernardino County***

It took the San Bernardino County Flood Control District approximately two-and-a-half years to obtain a 404 permit to structurally stabilize an existing soft levee, as identified by the US Army Corps of Engineers in its Flood Plain Manual, to provide adequate flood protection to adjacent properties. As a condition of the permit, the District was required to provide over four acres of on-site revegetation and almost nine acres of off-site vegetation enhancement at a cost of approximately \$55,000.