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## CLEAN WATER ACT – SECTION 404 PERMITTING

**REQUESTED ACTION:** Support legislation (HR 1296) that would amend Section 404 of the Clean Water Act (CWA) to provide a narrow permitting exemption for maintenance removal of sediment, debris, and vegetation from flood control channels and basins. In addition, amend the CWA to extend the general permit term from five to 10 years.

**BACKGROUND:** The CWA and subsequent amendments have had a positive impact on the health of many of the nation’s rivers and streams. One of the unintended consequences of the Act, however, is its impact on the maintenance of flood protection facilities and basins.

The CWA, first authorized in 1972 and amended in 1977 and 1987, governs the discharge of “dredge or fill material” into waters of the United States. In general, the Act requires counties and other local entities to obtain a permit from the U.S. Army Corps of Engineers (Corps) before dredged or fill material may be discharged into waterways or wetlands.

The Act also exempts certain activities from requiring permits, including activities performed “for the purpose of maintenance of currently serviceable structures.” Specifically, Section 404(f)(1)(B) defines non-prohibited discharge of dredge or fill material as “discharge of dredge or fill material for purposes of maintenance including reconstruction...,” leading to the conclusion that Congress intended for maintenance of currently serviceable flood protection facilities and basins to be exempt from 404 permit requirements.

The Corps, however, has interpreted that the Section 404 exemption does not apply to routine maintenance removal of accumulated sediment, debris, and overgrown vegetation from flood protection facilities and basins. This narrow interpretation that some Corps’ districts have adopted increases their workload, causing a significant backlog in permit processing that is thwarting local agencies’ efforts to perform their maintenance in a timely and responsive manner.

Failure to perform essential maintenance activities results in undue liability on local flood protection agencies and reduces available water storage (exacerbating drought conditions). Further, the processing time – normally one to three years – and compensatory mitigation required to obtain Section 404 permits have become an impediment for local entities to provide critical flood protection. It should be noted that this proposal is not applicable when endangered species are present in the directly affected maintenance area.

In March of 2013, Representative Gary Miller (R-CA) introduced the *Flood Control Facility Maintenance Clarification Act* (HR 1296). The legislation, which would provide a narrow 404 permitting exemption for maintenance removal of sediment, debris, and vegetation from flood control channels and basins, could be considered by the House Transportation and Infrastructure Committee later this year.

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