Overview of the Army Corps of Engineers Regulatory Program, Including Vernal Pool Landscapes

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ABSTRACT. This paper is an overview of the Regulatory Program, which involves regulating Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act of 1977. Wetland delineations and the permitting processes are covered. The mission of the Regulatory Program is to ensure that the chemical, physical and biological quality of our nation's waters are protected from irresponsible and unregulated discharges of dredged or fill material that could permanently alter or destroy these valuable resources.

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INTRODUCTION

This article is an overview of the wetland regulatory program by the Army Corps of Engineers.

Figure 1 shows the Sacramento District regulatory boundary, which extends outside of California to include Nevada, Utah, and part of Colorado. This district has several field offices, including a brand new field office in Las Vegas. Within the state of California, we share Kern County with the Los Angeles District to the south, and Solano and Contra Costa Counties with the San Francisco District to the west. We have a field office located in Redding.

Primary Authorities that we regulate are Section 10 of the Rivers and Harbors Act of 1899, as well as, section 404 of the Clean Water Act of 1977. Work effecting navigable waters, rivers and interstate lakes or rivers would fall under Section 10. Navigable waters, designated by Congress, are based on past and present commerce; they include all tidal areas and most of our rivers. One river that is not listed is the Feather River.

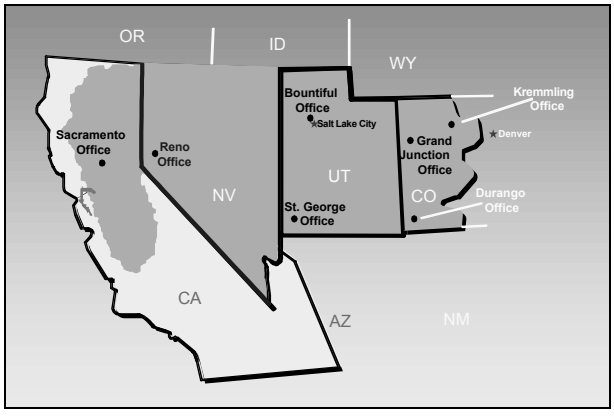

FIGURE 1. Regulatory Boundaries of the Sacramento District, Army Corps of Engineers.

Types of work requiring permits under Section 10 are basically dredging, boat docks, marinas, bank protection, levee work—anything on, in or above navigable waters.

Section 404 of the Clean Water Act requires a permit to be obtained from the United States Army Corps of Engineers for any dredged or fill materials into any waters of the United States. The purpose is to restore and maintain the chemical, physical, and biological integrity of the nation's waters.

WATERS OF THE UNITED STATES

Waters of the United States include tidal waters and fresh waters with their associated waters and wetlands. Hydrological connection is very important. Navigable waters of the United States and adjacent associated wetlands and tributaries are shown in Figure 2.

DEFINING WETLANDS

Wetlands are areas that are inundated or saturated

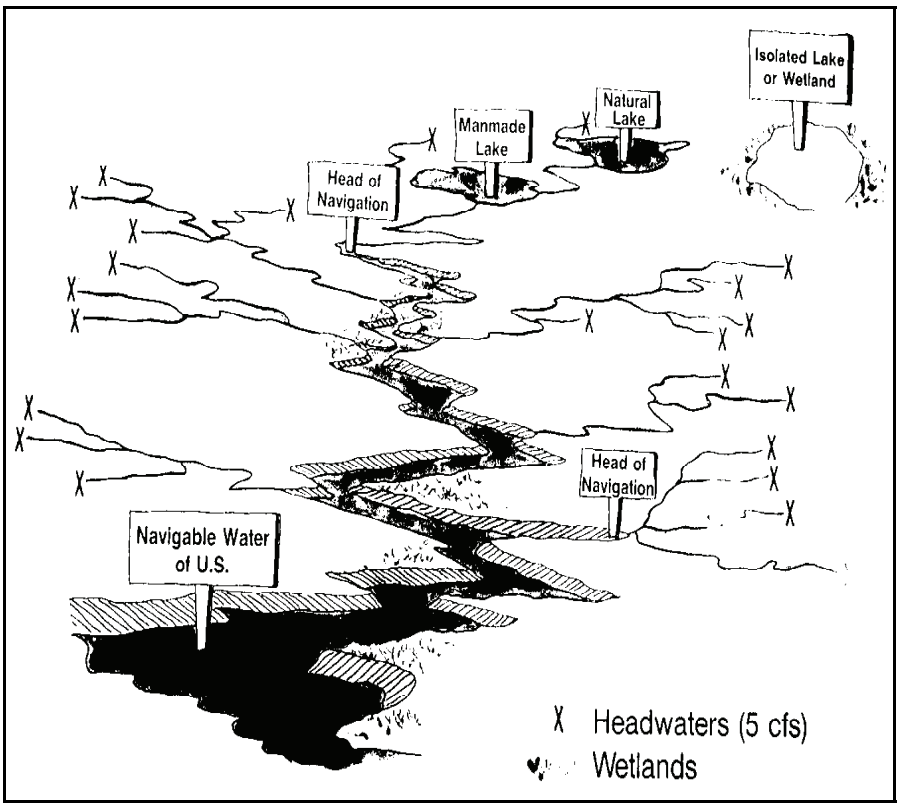

FIGURE 2. Waters of the United States.

for long periods of time and that support a prevalence of wetland vegetation. Types of wetlands include wet meadows, seeps, prairie potholes, and vernal pools.

We have a three-parameter test that we use, which consists of looking at:

1) wetland vegetation,
2) hydrology and
3) wetland soils.

These help determine whether an area is considered a wetland. A few of the other items that we look at are wetland function and values, as well as the social economic aspect, erosion control, water quality, sediment removal, aquatic productivity, and fish habitat.

WETLAND DELINEATION

Completing a wetland delineation and submitting it to our office so that we can make a jurisdictional determination on the proposed project is usually the first step in obtaining a US Department of Army Permit. We do have minimum standards to follow for completing wetland delineation, as I am sure some of you are very familiar with.

PERMITTING PROCESS

Typical activities requiring Section 404 Permits could be site development fills for residential, commercial, or recreational developments, construction of breakwaters, levees, placement of riprap, road fills, mining, ditching and similar activities.

Types of Permits

The types of permits that applicants can request for their proposed projects include Standard and Individual permits. These are for activities with impacts greater than 0.5-acres or impacts of 300 linear feet or more of streambed. We also have Nationwide permits (general permits) and at this time, we have 44 activity specific programmatic permits. These types of permits can be used for activities that would not have more than 0.5-acres of impacts.

The Nationwide Permit 39 for Residential Development summary sheet lists the general conditions that must be complied with in order for us to issue the permit. Examples of the general conditions include compliance with the Endangered Species Act (ESA) and the identification of cultural resources.

Permit Application Process

The permit application process involves the following steps. First, we start with the verified wetland delineation. If it's a large project, we have pre-application meetings. Those are held once a month, the first Thursday of every month. Second, we review the application and the comprehensive report describing the project and how it would comply with all the permit general conditions. Third, the application must include a mitigation plan to offset the impacts to wetlands.

For a Nationwide permit application, we have 45 days to review for completeness, and concurrently the applicant or applicant's agent should be applying for other permits such as Section 401 Regional Water Quality Control Permit. We evaluate for compliance with regulations, also for compliance with ESA, as well as section 106 of cultural resources. The applicant must submit alternative analysis information to us. The project must be designed to avoid, minimize and mitigate to the greatest extent possible.

Projects involving greater than 0.5 acres require an alternative analysis to be submitted with the application package. In addition, a public notice is written and goes out for a 30-day review for comments. Applicants have to prove that the proposed project would be considered the Least Environmentally Damaging Practicable Alternative or "LEDPA." Next, to comply with National Environmental Protection Act (NEPA), a decision document is prepared, and finally the permit is written. The LEDPA process involves compliance with Section 404(b)(1) Guidelines. EPA has been authorized to oversee this portion of the Clean Water Act so we work closely with them in helping the applicant identify the LEDPA. Items that are considered in the permit process include the following public interest factors: conservation, economics, aesthetics, environmental concerns, fish and wildlife, historic and cultural resources, food production, recreation, land use, water quality, water supply, navigation, rare/endangered species, safety, energy needs. Section 401—Water Quality Certification for Section 404 Permits—is required from the California Regional Water Quality Control Board.

As far as mitigation—we look at each project as a site specific activity and require the appropriate mitigation by asking for avoidance, minimization and compensatory mitigation. The types of mitigation include on-site, off-site, in kind, or out of kind, mitigation banks and replacement ratios.

Processing a permit request is a collaborative effort. Some of the federal partners we work with are: Environmental Protection Agency, US Fish and Wildlife Service, National Marine Fisheries Service, Natural Resources Conservation Service, and National Oceanic and Atmospheric Administration. Some of our state partners are: California Department of Fish and Game, California Department of Water Resources, California State Resources Control Board, California Historic Resources Information System, California State Lands Commission. We work with environmental groups as well, like Butte Environmental Council. We try to listen to everybody.

Here is our website address if you would like more information on the Regulatory Program:

www.spk.usace.army.mil/regulatory