

# Permitting and Maintenance Activities

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*The Rural LMA Work Group (WG) was established in late 2012 with the purpose of serving as a forum for the California Central Valley Flood Control Association to identify problems that are unique to rural areas and seek solutions for inclusion in the Regional Flood Management Plans. The Rural LMA WG identified eleven topics of interest and has prepared a paper describing each topic from the perspective of the Rural LMA WG. These papers continue to be developed by the Rural LMA WG and are therefore subject to revision.*

## Topic Statement

Most maintenance activities are exempt from NEPA and CEQA but require compliance with other laws such as State and Federal endangered species laws and California's streambed alteration law. Compliance with such laws is usually achieved through a permitting process that is burdensome, lengthy, and expensive. As such, LMAs typically avoid the permitting process altogether to meet obligations for levee safety, or choose to not conduct proper maintenance to avoid consequences from the resource agencies.

## Description of Topic

Compliance with the State and Federal endangered species acts (ESA) presents a difficult challenge primarily because "rules of thumb" for activities impacting listed species are changing and the process to obtain permits is burdensome and lengthy often times delaying maintenance or forcing LMAs to conduct their maintenance without consultation or risk eligibility in Federal rehabilitation programs. This dilemma is particularly difficult for rural LMAs because they lack the financial resources to rehabilitate the levees following any event without Federal assistance. Further, LMAs lack the resources to implement costly mitigation measures.

Levee maintenance requirements were prescribed by USACE decades prior to ESA laws upon turnover of the SRFCP and SJR&TP. LMAs have adjusted their maintenance methodologies to accommodate these laws and the listings of species but common maintenance practices that in the past were not considered to affect listed species now are making it difficult to meet obligations for levee maintenance.

Improvements to the permitting process could be achieved through programmatic agreements or other prearranged agreements that provide for efficient processing. Additionally, incentives for using certain maintenance methodologies (e.g., timing and/or phasing of activity, type of management activity such as cutting versus burning versus spraying or grouting versus , etc), which if used, would alleviate mitigation requirements. Other options could include setting aside designated mitigation areas or providing pre-mitigation (advance mitigation).

For any activity that will substantially divert or obstruct the natural flow of the river; substantially change or use any material from the bed, channel, or bank of a river; or deposit or dispose of debris, waste or other material where it may pass into a river requires notification to California Department of Fish and Wildlife (DFW) for a streambed alteration permit. DFW contends that Section 1600 applies to areas from the waterside levee crown to and the water and wetted channel. While there is disagreement between the LMAs and DFW on what actions

constitute substantial, both parties have been relatively successful in moving forward with streambed alteration agreements enabling maintenance activities to proceed.

A programmatic agreement or framework for permits with the resource agencies could provide an effective avenue for permitting that enables the LMAs to conduct their maintenance activities while considering the interests of listed species and resources. Agreements could be tailored for the LMA, species, timelines, etc.

### **Relevance to the RFMP**

LMAs want to perform maintenance in compliance with all rules and regulations but processes and uncertainty make this difficult. The RFMP presents an opportunity to propose a solution that provides the LMAs with the permissions they need to conduct maintenance and the assurances the resource agencies to protect listed species and resources.

SUBJECT TO CHANGE