

REGULATORY BRANCH MEMORANDUM 2004-04

SUBJECT: Levee Maintenance in Sacramento-San Joaquin Delta

1. Purpose. To establish policy for consistent application of permit requirements for the repair of levees in the Sacramento-San Joaquin Delta.

2. Applicability. This applies to all Regulatory actions on levees in the Delta.

3. Background. A common maintenance issue in the Delta is the deterioration of levees on either the water- or landside of the levee, such that additional fill material is required for repair. Wetlands may exist on the landside of the levee due to seepage or other causes. A toe drain may also exist.

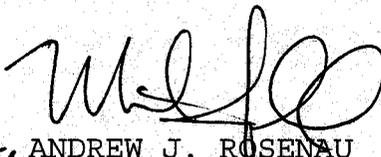
4. Policy. DA authorization for levee repair is required when such repair involves work in or over navigable waters or results in a discharge of dredged or fill material in waters of the U.S.

a. Levee Cross-Section: Nationwide Permit 3 (NWP 3) allows for repair, rehabilitation, or replacement of structures or fills with minor deviations in the structure's configuration or filled area. Minor deviations are allowed due to changes in construction codes or safety standards necessary to make the repairs, provided the impacts are minimal. Delta levees may be reconstructed to current safety standards, as long as impacts are minimal. Impacts will generally be considered minimal if Delta levee reconstruction does not exceed Public Law 99 (PL 99) standards for non-project agricultural levees. These standards include a height of 1.5 feet above the 100-year flood level, crown widths of 16 feet, side slopes of 1V:2H on the waterside and 1V:3-5H on the land side, depending on levee height and depth of peat. NWP 3 may not be used to authorize raising the height or increasing the crown width of the levee above PL 99 standards, thereby increasing the level of protection, unless such improvements were previously authorized by DA permit. Furthermore, NWP 3 does not allow for improvements, including bank protection,

where none existed previously. Natural banks of rivers or streams are not "structures or fill" as described in NWP 3 and therefore not covered by this permit.

b. Toe Drains: Toe drains are normally man-made drainage ditches constructed on uplands on the landside of the levee. Accordingly, toe drains are not considered waters of the U.S., unless they were constructed through wetlands (or are channelized streams). If wetlands exist on both sides of the toe drain, we will assume the drain was constructed in wetlands and is jurisdictional. A regulated toe drain may be permitted to be filled and replaced with a new toe drain under NWP 3 as a part of levee repair.

c. Wetlands Landside of Levee: Wetlands on the landside slope of the levee or between the toe of the levee and the toe drain may be assumed to result from seepage through the levee. Accordingly, such wetlands are not considered waters of the U.S. Wetlands that extend beyond the toe drain (or the toe of the levee, when no toe drain exists) may be the result of many factors including high ground water, local drainage, topographical depressions, and levee seepage. Since similar wetlands occur in many locations near waterways, such wetlands are considered to occur under normal circumstances and are likely jurisdictional.


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