

# US Army Corps of Engineers Section 408 Overview

## Regulatory Workshop

July 22, 2016

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Project Manager

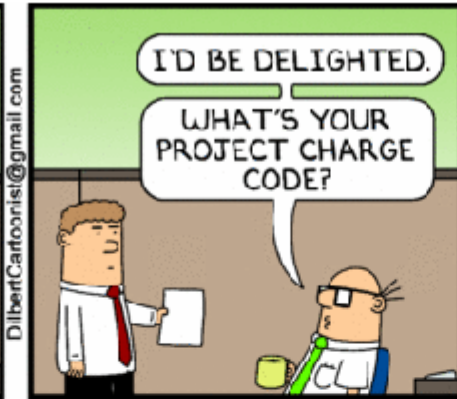
Flood Protection and Navigation

US Army Corps of Engineers, Sacramento  
District



US Army Corps of Engineers  
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# Presentation Overview

- Authorities and Policy
- Roles and Responsibilities
- Reviews
- Recommendations and Approvals
- Toolbox
- Case Study



# Authorization - Section 408

Authorized in Section 14 of the River and Harbors Appropriation Act of 1899 (33 USC 408).

Provides that the Secretary of the Army may, on recommendation of the Chief of Engineers, ***grant permission for the alteration of a public work so long as that alteration is not injurious to the public interest and will not impair the usefulness of the work.***





# Policy Highlights – EC 1165-2-216

USACE Policy - Engineering Circular 1165-2-216 :

Updated as of 30 September 2015 – Policy and Procedural Guidance for Processing Requests to Alter US Army Corps of Engineers Civil Works Projects Pursuant to 33 USC 408

- Defines what USACE considers an Alteration:
  - Alterations or alter refers to any action by any entity other than USACE that builds upon, alters, improves, moves, occupies, or otherwise affects the usefulness, or the structural or ecological integrity, of a USACE project. Alterations also include actions approved as “encroachments” pursuant to 33 CFR 208.10.

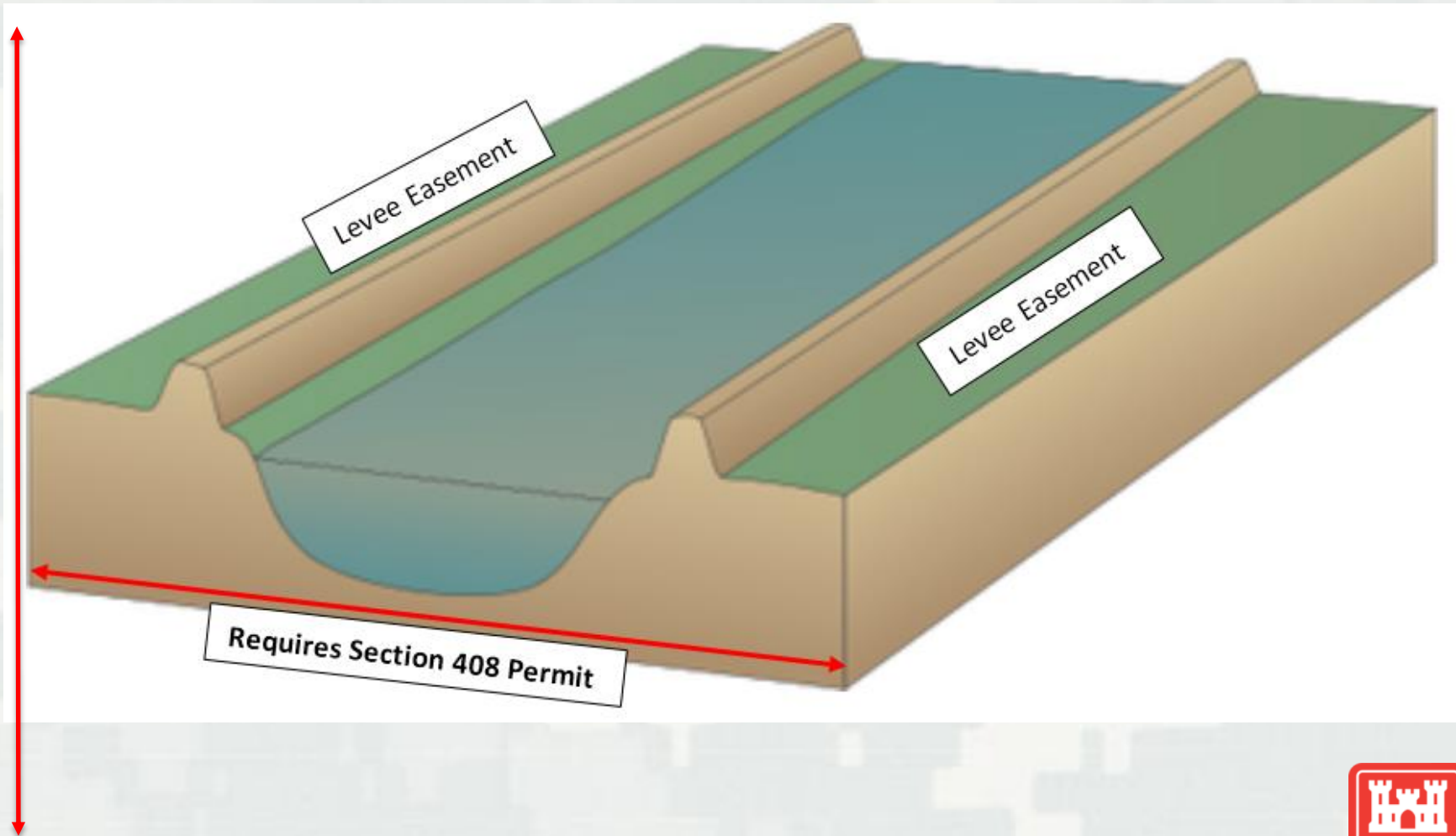


# Policy Highlights – EC 1165-2-216

- USACE Jurisdictional Reach:
  - 408 Permissions are only required for alterations proposed within the lands and real property interests identified and acquired for the USACE project and to lands available for USACE projects under the navigation servitude.
  - Routine operations and maintenance (O&M) do not require 408 permissions.
  
- Requester Requirements:
  - 408 requests must come from or have written concurrence of the non-federal sponsor including acceptance of any new O&M requirements
  - All 408 projects must meet current USACE design and construction standards.
  - Provides Transparency and standardizes contents of 408 review packages
  
- Decision Level Criteria:
  - Provides clear criteria to what determines whether a permit can be approved Locally or at the Headquarters' level



# Section 408 Jurisdiction



# New Terminology

<b>Old Terminology</b>	<b>New Terminology</b>
Minor/Major	District/HQUSACE
Modification/Encroachment	Alteration
Applicant	Requester
H&H Risk Analysis	H&H System Performance Analysis



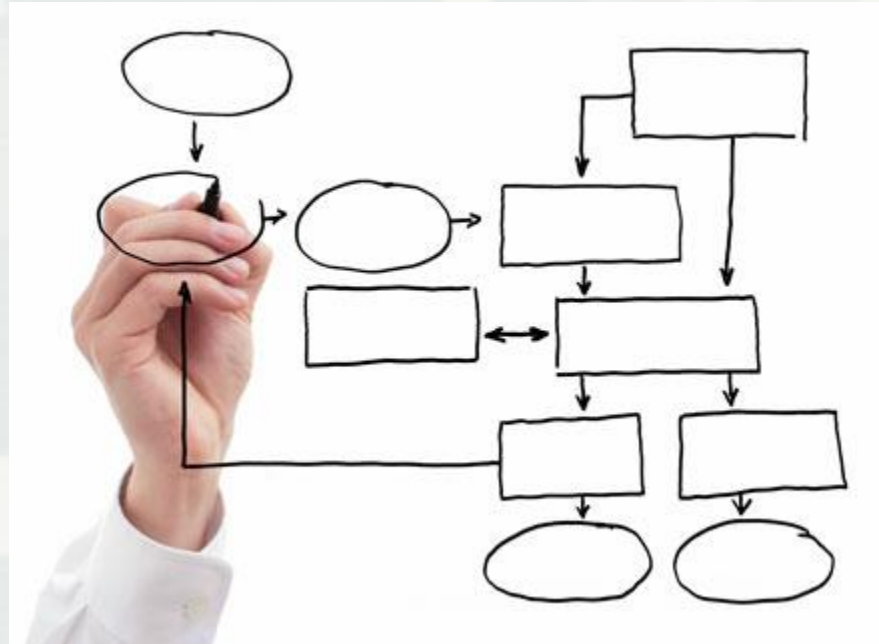


# Regulatory Coordination

- 408 requests are not handled by the Regulatory Program, however there is close coordination between the two groups.
- Section 10/404 decisions are separate decisions and require separate decision documentation
- Section 408 decision must be made before the Section 10/404 decision is issued.
- Regulatory funds can only be used for Section 10/404 actions, but that may include actions with an associated Section 408 request. (i.e. participate in joint meetings and internally coordinate portions of shared documents)



# 408 Process



# Basic Steps

- Step 1: Pre-Coordination
- Step 2: Written Request
- Step 3: Required Documentation
- Step 4: District Agency Technical Review
- Step 5: Summary of Findings
- Step 6: Division Review, if required
- Step 7: HQ Review, if required
- Step 8: Notification
- Step 9: Post-Permission Oversight



# 408 Process Cont'd

- Step 1: Pre-Coordination
  - Pre-application meetings to help identify USACE procedures and potential issues
  
- Step 2: Written Request
  - Officially initiates USACE involvement and review
  - Determines documentation and approval level requirements
  
- Step 3: Required Documentation
  - Technical Analysis (i.e. Basis of Design)
  - Hydrologic and Hydraulics System Performance Analysis
  - Geotechnical Analysis
  - Environmental Compliance (NEPA)
  - Real Estate Requirements
  - Requester's Review Plan (district determination)



# 408 Process Cont'd

- Step 4: District-Led Agency Technical Review
  - Impair of the Usefulness of the Project Determination
  - Injurious to the Public Interest Determination
  - Legal and Policy Compliance Determination
  
- Step 5: Summary of Findings
  - SPK makes their recommendation
  
- Step 6: Division Review (if required)
  - ~Minimum 30 day review period
  
- Step 7: HQUSACE Review (if required)
  - ~Minimum 30 day review period





# 408 Process Cont'd

- Step 8: Notification
  - SPK provides written notification of 408 request decision
  
- Step 9: Post-Permission Oversight
  - Construction Oversight
  - As-Builts
  - O&M Manual Update
  - Post Construction Closeout
  - Administrative Record



# ROLES AND RESPONSIBILITIES



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# The Corps' Role

- NEPA (if they are the lead agency), ESA Compliance, 106 NHPA, E.O. 11988, Tribal Coordination
- Technical Review and Recommendation for Approval
- Corps' Review Plan
- Final Approval of Permissions



# Project Sponsor/Requester's Role

- Technical Analysis
- Environmental Analysis
- Real Estate Analysis
- Supporting Documents
- Safety Assurance Reviews
- Operations and Maintenance
- Funding (Section 214 of WRDA 2000)



# Technical Analysis

- Geotechnical Investigations
- Geotechnical Basis of Design
- Structural Evaluation
- Hydrologic and Hydraulics System Performance Analysis
- Design
  - Conceptual (30 percent)
  - Preconstruction Engineering and Design (60-65 percent) \*
  - Final (100 percent) \*

-The earlier the better!!





# Environmental Compliance

- NEPA
  - The applicant is responsible to provide NEPA compliance documentation beyond a level of Categorical Exclusion. This includes Environmental Assessments and Environmental Impact Statement – can be combined NEPA/CEQA document
  
- Endangered Species Act
  - The applicant will provide Biological Assessment for Section 7 Consultation by the Corps with both FWS and NMFS (if applicable)
  
- National Historic Preservation Act
  - The applicant is responsible to provide archeological report presenting the assessments of affects to cultural resources for Section 106 consultation by the Corps.



# REVIEWS



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# Reviews

- Agency Technical Review
- District Quality Control and Assurance
- Safety Assurance Review (Type II Independent External Peer Review) Guidance – EC 1165-2-214



# **RECOMMENDATIONS and APPROVALS**



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# Approval Level

- HQUSACE approval is required if any of the following is needed:
  1. Does the proposed alteration require a SAR plan?
  2. Does the proposed alteration require an EIS, where USACE is the lead agency?
  3. Does the proposed alteration change how the USACE project will meet its authorized purpose?
  4. Does the proposed alteration preclude or negatively impact alternatives for a current USACE Study?
  5. Is the requester asking for 221 credit?
  6. Is the proposed alteration for installation of hydropower facilities
  7. Is there a desire for USACE to assume O&M responsibilities of the proposed navigation alteration pursuant to Section 204(f) of WRDA 1986?





# Expected Time Frames

From Written Request to Issuance of Permission:

District Decision Level - 6-8 months

HQ Decision Level - 2-3 years



# TOOL BOX



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# OFFICIAL DOCUMENTS

- EC 1165-2-216 Section 408 Policy and Procedures
- EC 1165-2-214 Safety Assurance Review
- Guideline for Implementing EO11988 (Federal Register Posting)
- Further Guidance EO11988
- ER 1165-2-26 EO 11988



# STAFFING

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# CASE STUDIES:



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# Case Study #1

- Project Location: Sacramento River, 8 miles d/s of Rio Vista
- Proposed Project: Removal of gates & fencing, adding fill to the landside levee slope, and widening the levee crown.
- SAR needed: No
- NEPA Determination: EA/FONSI
- Request for credit under Section 221: No



# Case Study #2

- Project Location: West Sacramento
- Project Description: Construction of setback levee and installation of slurry cutoff walls
- SAR needed: Yes
- NEPA Determination: EIS
- Request for credit under Section 221: Yes



# Case Study #3

- Project Location: Chico State University
- Project Description: Replace pedestrian bridge
- SAR needed: No
- NEPA Determination: EA/FONSI
- Request for credit under Section 221: No



# Case Study #4

- Project Location: Western Pacific Interceptor Canal, Yuba County
- Project Description: Installation of slurry cutoff walls
- SAR needed: Yes
- NEPA Determination: EA
- Request for credit under Section 221: No



# The End



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