

# NAVIGATING THE FLOW IN REAL TIME PRESENTATION

AQUATIC RESOURCES PERMITTING

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BAFPAA Annual Meeting Co-Chair  
BAFPAA Environmental Permitting  
Committee Co-Chair  
BAIRWP Rep



**SEQUOIA**

Ecological Consulting, Inc.

# Navigating Aquatic Resource Permitting: Processes, Challenges, and Strategies

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NIC ANDERSON (PROJECT MANAGER / GIS ANALYST)

# Agenda

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1. Relevant State and Federal Laws, Regulations, and Policies
2. Clean Water Act Section 404
3. Porter-Cologne Water Quality Control Act
4. Clean Water Act Section 401
5. CDFW Lake and Streambed Alteration Agreement
6. Challenges and Potential Solutions
7. Discussion and Q&A

# Regulatory Framework

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- Aquatic resources are protected by many federal and state laws, regulations, and policies

Federal	State
<ul style="list-style-type: none"><li>• Clean Water Act (CWA; Section 404)</li><li>• CWA (Section 402)</li><li>• Rivers and Harbors Act, Section 10</li><li>• Coastal Zone Management Act</li><li>• Wild and Scenic Rivers Program</li><li>• E.O. 11990 “Protection of Wetlands”</li><li>• E.O. 11988 “Floodplain Management”</li></ul>	<ul style="list-style-type: none"><li>• CWA (Section 401)</li><li>• California Department of Fish and Wildlife (CDFW) Lake and Streambed Alteration Agreement (LSAA)</li><li>• Porter-Cologne Water Quality Control Act</li><li>• California Coastal Act</li><li>• California State Wetland and Riparian Protection Policy</li><li>• E.O. W-59-93 “State Wetland Conservation Policy”</li></ul>

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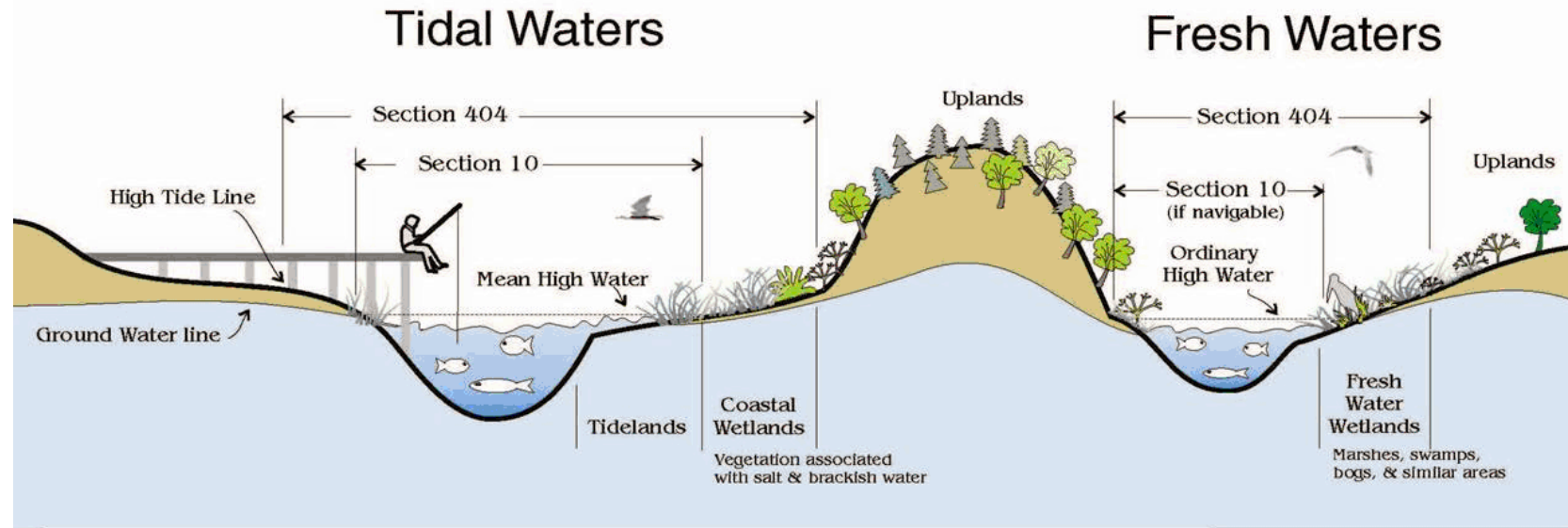
# What Is an “Impact”?

<b>U.S. Army Corps of Engineers (USACE) CWA Section 404/401</b>	<b>CDFW LSAA (1600) Permit</b>
<p>Discharge of dredged material</p> <ul style="list-style-type: none"><li>• Addition of dredged material to a specific discharge site</li><li>• Runoff/overflow from a contained land or water disposal area</li><li>• Incidental redeposit of excavated material</li></ul> <p>Discharge of fill material</p> <ul style="list-style-type: none"><li>• Material that replaces any portion of water with dry land OR</li><li>• Changes the bottom elevation of any portion of water</li></ul>	<p>Work activities that may:</p> <ul style="list-style-type: none"><li>• Divert or obstruct the natural flow of any river, stream, or lake (RSL)</li><li>• Change the bed, channel, or bank of any RSL</li><li>• Use material from any RSL</li><li>• Deposit or dispose of material into any RSL</li></ul>

# USACE CWA Section 404

- **Tidal Waters:** Up to the High Tide Line, inclusive of adjacent wetlands with continuous surface connection
- **Fresh Waters:** Up to the ordinary high water mark (OHWM), inclusive of adjacent wetlands with continuous surface connection

## CORPS OF ENGINEERS REGULATORY JURISDICTION



### Section 404

Discharge of Dredged or Fill Material  
(all waters of the U.S.)

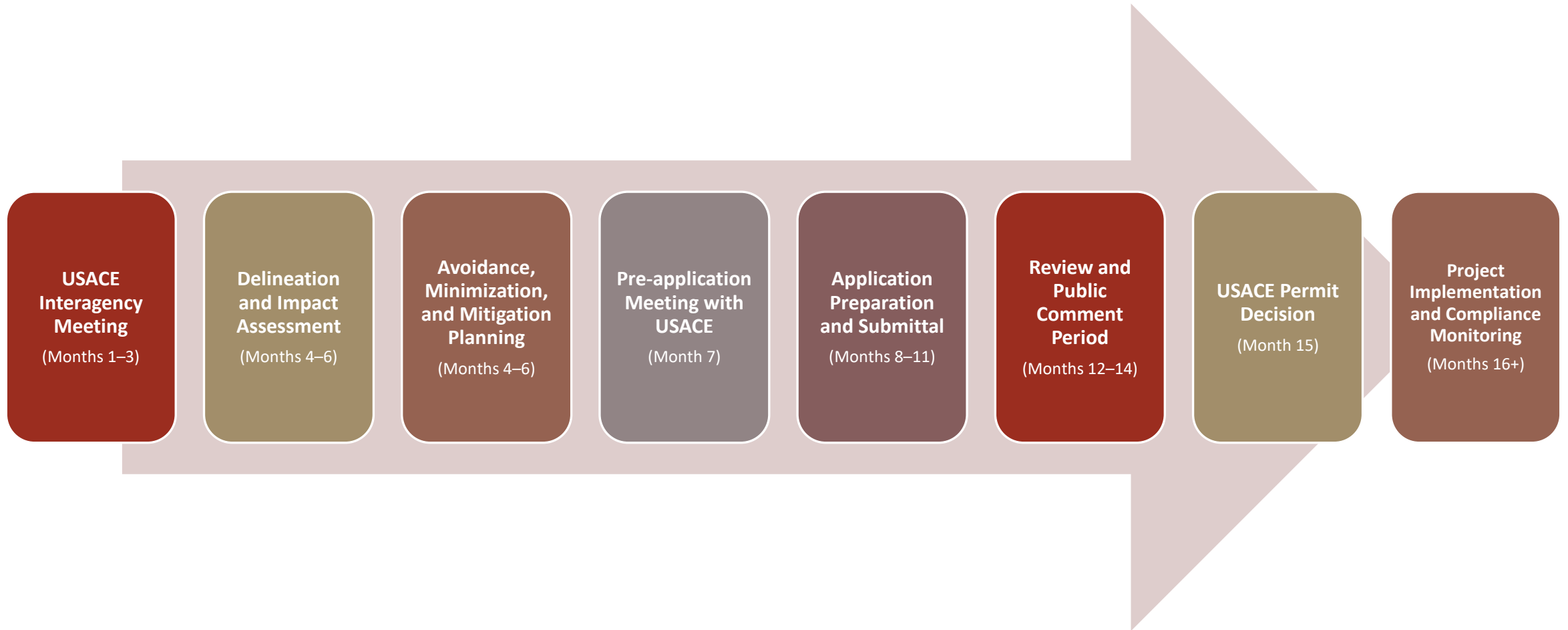
All filling activities, utility lines, outfall structures,  
road crossings, beach nourishment, riprap,  
jetties, some excavation activities, etc.

# USACE CWA Section 404 Permits

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- **Regional General Permits (RGPs):** Essentially regional permits that have already been written for a small number of project categories; often issued for common, maintenance-type activities
- **Nationwide Permits (NWPs):** Similar to RGPs, but at a nationwide level; standard categories are numbered and include projects such as road crossings, bank stabilization, repairs to existing structures, flood control maintenance, and wetland restoration for wildlife habitat
- **Individual Permits (IPs):** Required for projects that have more extensive impacts to areas under USACE jurisdiction and do not fit within standard NWP categories; public review is required
- **Programmatic General Permits (PGPs):** Streamlined to avoid duplication of an existing state, local, or federal program
- **Emergency Permits:** Authorized for discharge/fill into Waters of the United States for necessary repair and protection measures associated with an emergency situation

# CWA Section 404 IP Permitting Process



# Common Issues & Solutions: CWA 404 via USACE

Common Issues	Solutions
<p><b>Project lacks justification:</b> Justification includes purpose and need for the project, or the project is not the least environmentally damaging practicable alternative</p>	<p>Determine if aquatic resource impacts are necessary to achieve the goals of your project; if necessary, consider all project alternatives and adjust project designs for smallest practicable impacts</p> <p>Provide information needed to justify an NWP, if applicable</p>
<p><b>Inadequate delineation and impact assessment:</b> Aquatic resources are not properly identified, jurisdictional boundaries are incorrect, and/or the extent of project impacts are incorrect</p>	<p>Use qualified wetland delineation professionals and ensure all project impacts are accounted for</p> <p>USACE may require consultations with U.S. Fish and Wildlife Service (USFWS), National Marine Fisheries Service, or State Historic Preservation Office</p>
<p><b>Inadequate mitigation planning:</b> Mitigation plans do not offset impacts to aquatic resources</p>	<p>Develop detailed mitigation plans and determine whether on-site or mitigation bank credits are sufficient</p>
<p><b>Incomplete application:</b> Application does not contain all required components or is inconsistent</p>	<p>Pay high attention to detail and ensure all application materials are accounted for</p>
<p><b>Lack of coordination and stakeholder engagement:</b> Failure can lead to issues, delays, and opposition</p>	<p>Prioritize early coordination with USACE and engagement with stakeholder groups</p>

# Porter-Cologne Water Quality Control Act (California Water Code)

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- Established the State Water Resources Control Board (SWRCB) and nine Regional Water Quality Control Boards (RWQCBs) as primary agencies responsible for water quality regulations
- Applies to all surface and groundwater within California
- Regulates the discharge of waste into state waters through waste discharge requirements (WDRs) and other regulatory mechanisms, such as total maximum daily loads and water quality standards
- SWRCB/RWQCB administers this process via the “Procedures”
- Section 404/401 required for fill/discharge below OHWM, while WDRs are required for any activities that may result in a discharge directly or indirectly impacting Waters of the State (WOTS)

# CWA Section 401 Water Quality Certification

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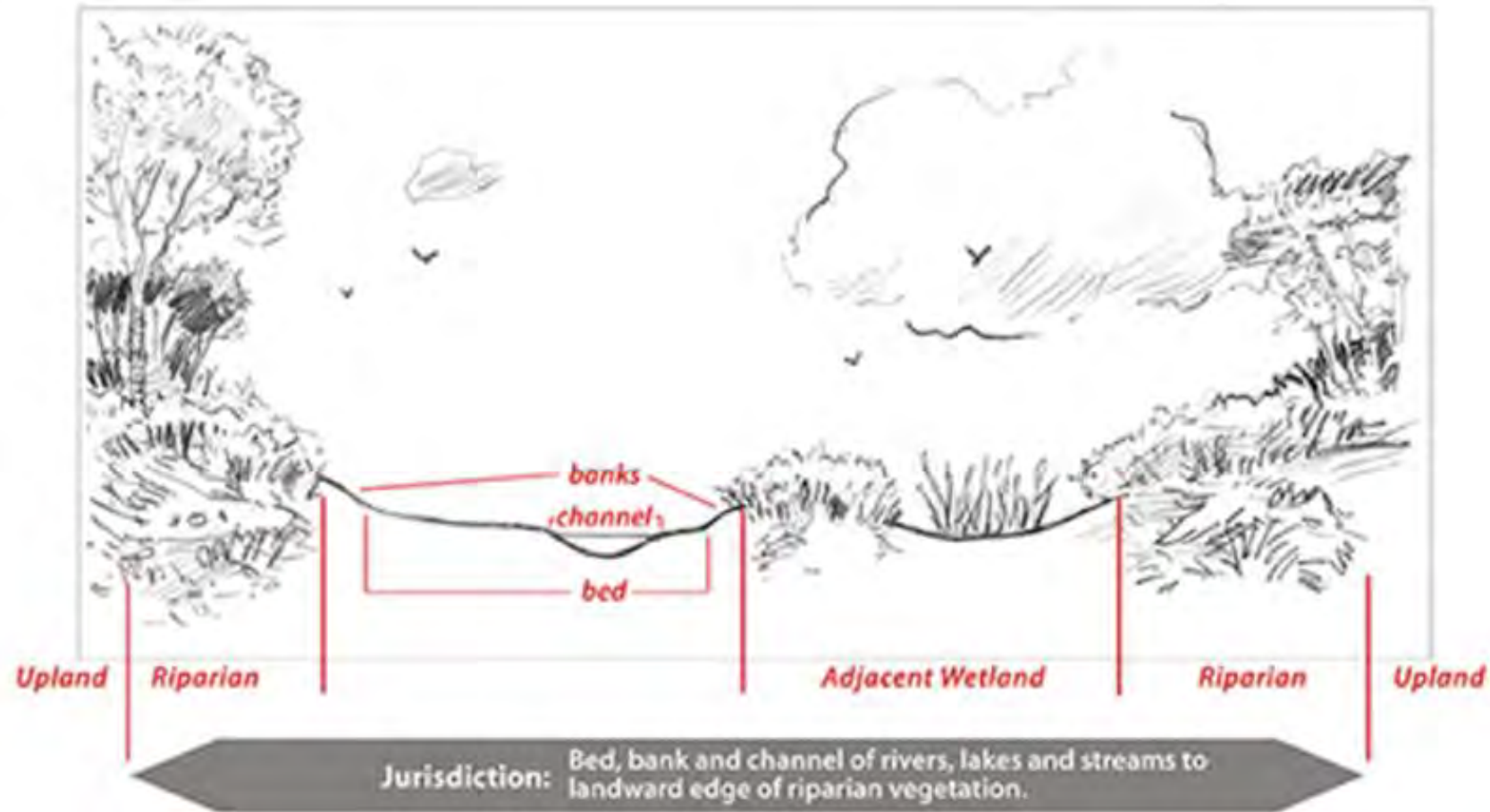
- Implemented to protect surface waters, ensuring that discharge, dredge, or fill from a proposed activity complies with laws, regulations, and state water quality control standards
- The process is governed by the SWRCB and nine RWQCBs
- All Section 10 and 404 permits will require a Section 401 Water Quality Certification unless certification is waived
- Must be California Environmental Quality Act (CEQA)-compliant prior to a SWRCB/RWQCB determination
- Certifications can not deny or provide conditions based on potential impacts not related to water quality (e.g., air quality, noise, traffic)
- Require a pre-filing meeting request with the appropriate Water Board at least 30 days before submitting an application for a Section 401 Water Quality Certification

# Common Issues & Solutions: CWA 401 via RWQCB

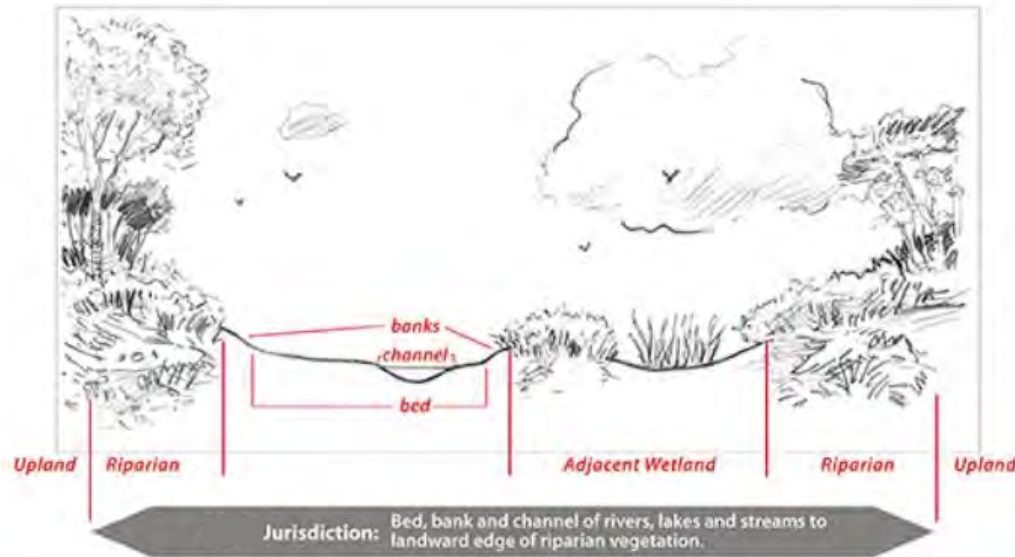
Common Issues	Solutions
<b>Project lacks justification:</b> Justification includes purpose and need for the project, or the project is not the least environmentally damaging practicable alternative	Determine if aquatic resource impacts are necessary to achieve the goals of your project; if necessary, consider all project alternatives and adjust project designs for smallest practicable impacts  Natural solutions that do not harden channel banks and bottoms, and that do not preclude vegetation establishment such as due to compaction, will be easier to permit
<b>Inadequate delineation and impact assessment (state resources):</b> Aquatic resources are not properly identified, jurisdictional boundaries are incorrect, and/or the extent of project impacts are incorrect	Use qualified wetland delineation professionals and ensure all project impacts are accounted for; impacts to state jurisdiction are different than impacts to federal jurisdiction—be sure it's clear
<b>Inadequate mitigation planning:</b> Mitigation plans do not offset impacts to aquatic resources	Develop detailed mitigation plans and determine whether on-site or mitigation bank credits are sufficient; typically, there is a higher threshold for mitigation requirements for impacts to state resources
<b>Incomplete application:</b> Application does not contain all required components or is inconsistent	Pay high attention to detail and ensure all application materials are accounted for; CEQA and 100% design plans typically required before permit will be issued

# CDFW LSAA (1600) State Jurisdiction

- Includes the bed, channel, or bank of any RSL, or material that may pass into any RSL
- Up to the extent of riparian vegetation
- These areas are highly productive fish and wildlife habitat



# CDFW Section 1602 LSAA (1600)



- Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may:
  - Substantially divert or obstruct the natural flow of any river, stream, or lake
  - Substantially change or use any material from the bed, channel, or bank of any river, stream, or lake
  - Deposit debris, waste, or other materials that could pass into any river, stream, or lake
- Mitigation measure to minimize impacts to aquatic resources, fish, and wildlife

# CDFW LSAA (1600) Considerations

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- “Take” is not authorized without a CDFW Incidental Take Permit or USFWS Biological Opinion; Take of a state-listed and/or federally listed species may require a separate California Endangered Species Act and/or Section 10 Endangered Species Act permit
- If an LSAA is required, a Section 404 permit and Section 401 water quality certification may be required
- CEQA compliance is required before an LSAA is issued; CEQA applies to all discretionary projects to be conducted or approved by a California public agency, including LSAA's, which must be considered during CEQA and Environmental Impact Report process
- CDFW will make their determination within 30 days of receiving application if your agreement term is 5 years or less

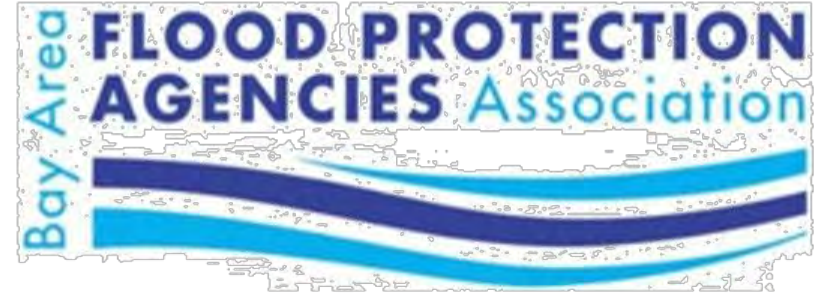
# Common Issues & Solutions: LSAA 1600 via CDFW

Common Issue	Solution
<b>Numerous projects:</b> CDFW may consider separate activities and individual impacts as individual “projects”	Use Environmental Permit Information Management System (EPIMS) activity descriptions to break out each “project” and request early feedback from CDFW
<b>Insufficient mitigation:</b> Mitigation measures are inadequate in comparison to impacts	Limit potential impacts to aquatic resources in project design and provide detailed mitigation measures
<b>Delays in CDFW notification:</b> Project delays caused by lack of CDFW notification	Consult with CDFW as soon as possible to determine if your project requires an LSAA
<b>Work windows:</b> Limits timeframes when work may be conducted within LSAA jurisdiction	Incorporate potential work windows into project design and implementation
<b>Incomplete application:</b> Application does not contain all required information and/or documentation	Pay high attention to detail and consult with CDFW prior to application submittal

# Discussion Questions

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1. What are some best practices to support a smooth permitting process?
2. Federal agencies in particular have been hit hard with staffing cuts; how can applicants still ensure timely permits for important work?
3. How consistent do you find the permitting process across regions and/or assigned staff?
4. Open Q&A



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BREAK**

