**REGULATORY PROGRAM**

**PERMIT ACTION**

APPLICANT: Monterey County Public Works / Monterey County Resource Management Agency

AREA: Carmel River Lagoon Annual Breach for Flood Control

DESCRIPTION: Either the Monterey County Public Works Department or Monterey County Resource Management Agency have been breaching the sandbar at the mouth of the Carmel River annually since 1973

to prevent flooding of residential properties built around the perimeter of the lagoon. Sandbar material is side cast using earth moving equipment to excavate a pilot breaching channel. The level of flooding varies from year to year and may be required into late summer. Adverse impact to juvenile steelhead results from breaching which exposes juvenile fish to extreme salinities and predation before they are fully developed as smolts.

Relevant Parties (Regulatory Agencies excluded):

California State Parks (CSP) – Land owner

Monterey County Department of Public Works (MCDPW) – Manually completes the breach

Monterey County Water Resources Agency (MCWRA) - Provides flood control Services to County

National Marine Fisheries Service (NMFS)

U.S. Fish and Wildlife Service (USFWS)

Carmel River Steelhead Association

Private landowners surrounding the Lagoon

Permitting History: In February 1992, the Corps issued a letter stating that the breaches did not meet the definition of a federal “emergency”. An application was provided to the Corps pursuant to Section 10 of the Rivers and Harbors Act (RHA) in October 1992 and again in February 1999. This application was withdrawn and MCWRA became the applicant in November of 2000. The Corps initiated Section 7 Consultation with NMFS in May of 1999 and again in December 2000. A biological assessment (BA) was provided to NMFS in September 2001. NMFS has maintained that BA does not provide “the best scientifically available information.” The Corps issued a letter in January 2003 stating that the BA does represent the “the best scientifically available information.” Until October 31, 2011 no permits had been issued for breaching of the Carmel River for flood control. The Corps has documented 26 unauthorized breaches. There is one unauthorized activity letter issued by the Corps in February 2000.

Recent Activity: The Corps has recently begun to work collaboratively with the MCDPW, MCWRA, and NMFS to bring the appropriate entities into compliance with federal and state law. The Corps issued authorizations pursuant to Nationwide Permits (NWPs) 13 and 33 on October 31, 2011 authorizing flood control measures in lieu of a breaching the lagoon. Measures included construction of an access ramp and placement of sandbags. These measures were not adequate to protect the surrounding areas from flood potential. The Corps issued three separate emergency authorizations (Regional General Permit 5) on November 14, 2011, December 20, 2011, and January 17, 2012. Each of these authorizations was contingent on the County entering into a Memorandum of Agreement (MOA) outlining a path forward that implements a long-term flood control solution that would not require mechanical breaching of the lagoon under emergency procedures. In addition, it was required that the lagoon be closed for the summer months for habitat establishment for California Red-legged Frog and Steelhead. A NWP 27 authorization was issued on 17 May 2012 for closure of the lagoon and for construction of a pilot channel to facilitate future management of the lagoon.

The winter of 2012 began with an intense early storm that caused Carmel River flow levels to rise to nearly 4,000 cubic feet per second (cfs) causing a rapid rise in the lagoon elevation. The MCWRA constructed a pilot channel to the southern portion of the beach on December 2, 2012 authorized by the May 2012 NWP. Sand bags were also placed around low-lying homes. No in-water work was completed. The Lagoon overtopped the sandbar during the night of December 2, 2012 causing scour of the southern beach and loss of sand for management. No management has occurred since. A meeting has been scheduled for January 31, 2013 to finalize the MOA.

Concerns: There is a long record of repeat violation of Section 404 of the Clean Water Act (CWA), the RHA, and the Endangered Species Act (ESA) regulations with no enforcement effort on behalf of Corps staff.

The Corps is therefore subject to lawsuit. A 60 day notice of intent to sue was issued in 2011 naming both the County and the Corps by the Carmel River Steelhead Association but no follow up action was taken. Routinely, responsible parties indicate funding constraints prohibit long-term solutions.

STATUS: The goal is to reduce Corps liability (for lack of enforcement) by providing some authorization for breaching activities. We can only authorize a project that includes some effort to protect the aquatic resource. Annual breaching as the sole flood control effort does not provide any protection of the resource. The NMFS has drafted a Jeopardy finding in response to the Corps 2000 consultation. The consequences of issuance of that finding were determined to be detrimental to project progress. The MCWRA and MCDPW have agreed to pursue a long-term solution (i.e. construction of a flood wall). An application to that effect was submitted on October 2, 2012. The Corps and NMFS have agreed to work cooperatively to permit the County during this interim season.

To prevent future unauthorized breaching a permitting strategy is required that will demonstrate progress toward a fully authorized flood control program that incorporates protection of aquatic resources. The Corps will need to work closely with stakeholders to provide progress on the application for a program that incorporates both short-term and long-term plan for flood control management. Currently the Corps requires a Biological Assessment to allow for a successful issuance of a Biological Opinion.

CONGRESSIONAL DISTRICT:

* 20th District, Congressman Sam Farr

 POINTS OF CONTACT:

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