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## Advocacy Position Statement

### **Wetlands Protection**

#### Statement of Purpose

The American Public Works Association (APWA) seeks to inform elected officials, regulators, policy-makers and decision-makers and the public at-large of its stated position on wetlands protection.

#### Statement of Position

There is a need to balance wetlands protection with the infrastructure development, operation, and maintenance needs of local governments. A system of wetland classification should be developed and prescribed under which work in certain types of wetlands will be exempt from Clean Water Act, (CWA), Section 404 permits and work in other types of wetlands will require permits that can be processed in a more efficient manner. The classification system and its administration must recognize (1) the varying values of wetlands and (2) the unavoidable linkage that frequently exists between urban infrastructure requirements and local wetlands. Also, streamlining the rules related to certain types of flood control and stormwater management facilities and of certain constructed water bodies located within municipalities is needed to permit their mandatory operation, improvement and maintenance by local governments. Day-to-day management properly belongs at the local level where it can be undertaken in partnership with state wetlands protection efforts and be provided in general compliance with the goals expressed by the federal government.

#### Background and Rationale

The U.S. Congress, through Section 404 of the CWA, established a wetlands protection program by vesting responsibility for its administration with the Secretary of the Army and vesting an oversight role, including veto powers, to the Environmental Protection Agency (EPA). The ensuing permit process has caused many municipalities to experience prohibitions, delays and added costs of municipal infrastructure development, operation and maintenance projects. Local municipal infrastructure projects sometimes, of necessity, affect wetlands and, as a result, are impacted by the federal wetland protection policies and their administration. In some cases, municipalities have been prevented from operating, managing and maintaining their stormwater management facilities and other municipal facilities in a timely and efficient manner. Also, in a growing number of cases local agencies are not in compliance with federal law and contracts which require certain facility maintenance work because the Section 404

procedures delay or prevent permits and approvals for the necessary work to be accomplished.

APWA believes that wetlands contribute to quality of life and economic well being of the nation and its citizens. In addition, many wetlands provide valuable flood control, protection against extreme weather conditions and water quality functions. At the same time, the provisions of the CWA dealing with wetlands protection should be amended to provide a balance between wetlands protection and the infrastructure needs of the nation's municipalities. The CWA should require the Army Corps of Engineers (COE) and the (EPA), in cooperation with the states and local governments, to develop a classification system of wetlands that considers not only their ecological importance but recognizes how various types of wetlands interact with, or are a part of, the municipal infrastructure.

APWA believes that various wetlands can be categorized into three groups, namely low value wetlands, significant value wetlands and outstanding national value wetlands. Once classified, the CWA and its wetlands protection provisions through the Section 404 permit program should recognize these classifications by (a) allowing development, construction and maintenance of urban infrastructure in low value wetlands without compensatory mitigation; (b) allow, with mitigation, essential infrastructure development and maintenance in significant value wetlands; and (c) generally preclude infrastructure development within outstanding national value wetlands unless there are compelling public interest reasons and all feasible and practicable compensatory mitigation is provided. This revised wetlands protection program should continue to recognize the public value of wetlands by reaffirming the requirement to avoid or minimize impacts to wetlands whenever a feasible and practical alternative exists.

The CWA also should be amended to establish a system for mitigation banking of wetlands. Mitigation banking allows development activities to be offset through the creation of new wetlands; under such a program, the developer receives mitigation credits, which can be accumulated and used to offset activities that cause wetlands losses.

In addition to classification and mitigation banking systems, the CWA should require the COE, in consultation with the states, EPA, and the U.S. Fish and Wildlife Service to develop a nationwide permit to cover normal operations, maintenance, restoration, as well as emergency activities, for municipal flood control and stormwater management facilities. When Section 404 permits are issued allowing construction of new flood control/stormwater management facilities, these permits should include provisions permitting, at permittee's discretion, normal operations, maintenance and restoration activities for these facilities, as well as provisions permitting operations during an emergency without the need for further permits.

Specifically, these facilities include flood control channels, ditches, ponds, canals, detention facilities, stormwater outfalls and all wetlands that were created or constructed for these purposes. These revisions to the Section 404 program with respect to flood control/stormwater management facilities would eliminate the need for local

governments to continually re-apply for permits for normal ongoing and necessary activities, and eliminate the need to obtain permits during flood emergencies.

APWA also believes that all municipal bodies of water originally created or constructed in upland (non-wetland) areas for recreation, aesthetic or surface water management purposes, and all activities and projects associated with their operation, maintenance and improvement should be exempt from the Section 404 permit regulatory requirements. These municipal facilities should not be considered waters of the United States. This group of municipal facilities, typically constructed for water quality and/or floodplain management purposes, includes lakes, ponds, channels, ditches, canals, created and constructed wetlands, and related facilities built in non wetland areas.

Finally, Section 404 requirements should to be streamlined to facilitate the permitting of municipal flood protection projects that are upgraded in order to reduce flooding potential of existing developed urban areas.

Sponsor

Water Resources Management Committee