

James Mark Haussener

September 18, 2017

State Water Resources Control Board
Attn: Jeannine Townsend, Clerk to the Board
P. O. Box 100
Sacramento, CA 95812



Subject: Proposed amendments to the California Ocean Plan and Inland Surface Waters, Enclosed Bays, and Estuaries of California Plan

Dear Members of the Board:

Last year I wrote to you on the earlier revisions and the overall question of why was the Board proceeding with these revisions. I have not seen anything in the revised Staff Report or the Preliminary draft to change that question to the Board. There does not appear to be any reason for moving forward with these documents. Rather than reducing inconsistencies, it appears the Procedures will increase inconsistencies.

Preliminary Draft of the Procedures for Discharges of Dredged or Fill Materials to Waters of the State.

What is meant by "historic definitions of waters of the United States?" There were times following the passage of the Clean Water Act that individuals within the Corps were defining a wetland differently than it is now being defined. Does this constitute a "historic definition?" If, so I request this language be withdrawn.

I am very concerned about the exclusion language for "artificial wetlands" used in the "settling of sediment," as the Board is looking at a definition of wetlands that include two of the three normally required conditions. A sediment settling pond will have soils consistent with wetlands and at certain times water consistent with wetlands. If an area used for "settling of sediment" becomes by definition a wetland, then it most likely will not be able to be used in the future. I request this be amended to prevent such a scenario from happening.

There is no description of what is an adequate address to issues identified by the Executive Officer or Executive Director.

If the Corps does not require a alternatives analysis for waters of the U.S., why is it mandatory for the permitting authority to require one? This language should be permissive.

The exclusions for Prior Converted Cropland should include that the area was wet due to natural issues, such as rain, and was not able to be planted. This should recognize the difference between abandonment and unable to farm. Additionally, why five years why not ten years.

It is not clear if the Ecological Restoration and Enhancement Project would include creation of "living shorelines" or the use of dredged material to "protect" existing ecosystems from sea level rise or storm surges. This section should be improved to meet the current State of California positions in documents such as Safeguarding California: Reducing Climate Risk and the California Climate Adaptation Strategy.

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Who determines the "relevant stakeholders" in the development of a Watershed Plan?

I am confused by the allowance of "General Orders" and the removal of "General permits."

In Section 230.6 there is a reference to Section 230.1, which I was unable to locate. Did you mean Section 230.10?

Section 230.10 requires definitions concerning terms such as "significantly adverse effects."

How can one define a wetland as a "natural wetland?" Using the term wetland to define a wetland is not helpful and will lead to confusion.

Section 230.40 should entirely be rewritten to include the federal definition of sanctuaries. The federal definition does not limit them to principally managed for the preservation and use of fish and wildlife resources.

Subpart H - when taking actions to minimize adverse effects, which actions should take precedent? While this example is in the extreme, it does show the potential for future problems. If one limits taking actions during biologically critical periods this may require taking the action during periods when human recreational activity is important.

230.70 - when minimizing a "plume" should one take into consideration naturally occurring "plumes" as a reference?

230.70 - there are times when material is being placed into a retention pond and the waters are not being released until such time as issues such as dissolved sediment levels are reduced. Does section (f) limit such an activity? If so it should be amended to allow for such activities.

230.77 - what is meant by "scientifically defensible pollutant concentration levels in addition to any applicable water quality standards?" Does this mean water quality standards are not scientifically defensible?

Definitions are scattered around in the document, which leads to confusion. There are definitions in the body of Procedures as well as in various Subparts. Why can't they all be in one section of the Procedures?

In compensatory mitigation how does the permitting authority measure the value of the loss of one type of aquatic resource versus the gain of another. I am aware of issues in San Francisco Bay with seasonal habitat versus tidal habitat.

At this time, it appears that a bureaucracy is developing a bureaucratic plan for a problem that may or may not exist. The take away from the Staff Report is that applicants are going to submit more information and regional boards will have to process more information. While there may be a "better" definition of a state wetland there still will be a requirement for case-by-case determinations of are these wetlands within state waters.

Based on the Staff Report, I request the Board withdraws Resolution 2008-0026 and directs staff to determine exactly what the impacts are to wetlands that are within waters of the state and not within the federal jurisdiction.

Sincerely,

James Mark Haussener

James M. Haussener