



September 18, 2017

Chair Felicia Marcus and Board Members
c/o Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I St., 24th Floor
Sacramento, CA 9814

Sent via electronic mail to: commentletters@waterboards.ca.gov

RE: Comment Letter – Statewide Dredged or Fill Procedures

Dear Chair Marcus and Board Members:

I am writing on behalf of Humboldt Baykeeper, which was launched in 2004 with a mission to safeguard coastal resources for the health, enjoyment, and economic strength of the Humboldt Bay community through education, scientific research, and enforcement of laws to fight pollution. We appreciate the opportunity to comment on the revised draft of the State Wetland Definition and Procedures for Discharges of Dredged or Fill Materials to Waters of the State. We also appreciate the State Water Board's efforts to address the public comments received last year on the initial draft and to strengthen the policy accordingly. While we support the revised draft and the jurisdictional framework it establishes, we believe some changes are critical to maximizing the efficacy of the policy. We also ask that the Board finalize this policy as soon as possible to secure these environmental protections and provide regulatory certainty in these uncertain times.

This policy, which will clarify the state's jurisdiction over California wetlands under state law and establish regular, uniform procedures for their protection, is critical for safeguarding these valuable ecosystems and the communities that depend on them. Our wetlands are vital for the health of our waterways, wildlife, communities, and economy. They filter pollutants, reduce flooding, replenish groundwater supplies, recharge creeks during summer months, and provide essential habitat. Unfortunately, California has already destroyed more than 90% of the wetlands that once thrived across the state, including wetlands in the Humboldt Bay region. And in Humboldt County, seasonal wetlands continue to be destroyed with little oversight by trustee agencies, while perennial wetlands continue to be degraded. These wetlands are critical to the health of salmon-bearing streams, from both a water quantity and water quality perspective.

Today, these systems are at greater risk than ever from an onslaught of federal rollbacks under the Trump Administration. In particular, efforts to repeal and weaken the Clean Water Rule, which would eliminate critical federal protections, could have profound impacts on California wetlands. Wetlands outside the Coastal Zone are especially at risk due to the lack of expertise of local municipalities, lack of a standardized wetland definition, and lack of resources at the Regional Board, which is so overloaded and far away that only the most egregious cases get attention.

In response to these threats, the State Water Board has released a new draft of the policy intended to halt the destruction of California's remaining wetlands. This draft includes a comprehensive wetlands definition and a clear process for determining whether a feature that meets this definition is entitled to waters of the state protections under the Porter-Cologne Act. We are also encouraged to see that the policy prioritizes avoidance and minimization of impacts over mitigation. The framework established by this draft will help create a uniform permitting approach across regions, provide regulatory certainty, and go a long way towards protecting California's wetlands. Uniform Regional Board guidance is essential in Humboldt County, where local municipalities have no wetland expertise on staff and rely entirely on Regional Board staff to identify potential wetlands in land use decisions and permitting. Given the threat posed by ongoing regulatory revisionism under the Trump Administration, adoption of this policy provides an invaluable opportunity to protect California's wetlands under state law even if federal Clean Water Act protections are rolled back.

While we are pleased with certain elements of the draft, there are, however, some changes remaining we believe are necessary to ensure that the Board adopts a policy that is truly protective. First, we ask that the Board strengthen the compensatory mitigation requirements so that mitigation ratios are always one-to-one or greater to ensure compliance with the no-net-loss policy. This is particularly important as mitigation wetlands typically do not perform as well as natural wetlands. Secondly, the exemptions to the alternatives analysis requirements must be refined to ensure that the Regional Boards always follow the guidelines regarding required level of analysis. Finally, we ask that the Board close a loophole for prior converted croplands. As currently drafted, this loophole could be exploited to exacerbate the destruction of natural wetlands on certain agricultural lands to make way for urban sprawl.

The revisions that have been made to previous drafts of these procedures are vital to maximizing the effectiveness of the policy. We are pleased to offer our support for these revisions and the Board's efforts, more broadly, to protect our critical wetland habitats, particularly in light of new threats and uncertainty at the federal level. We ask that the Board consider the additional changes we have requested above (and that are outlined in more detail in other comments from the NGO community), which we believe are essential for protecting the state's last wetlands. We also request that there is no significant deviation from the currently proposed timeline in adoption of the policy.

Sincerely,



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