



September 18, 2017



Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

SUBJECT: Ducks Unlimited, Inc.'s Comments on Preliminary Draft State Wetland Definition and Procedures for Discharges of Dredged or Fill Materials to Waters of the State (July 21, 2017 Version)

Dear Ms. Townsend:

This letter provides Ducks Unlimited, Inc.'s (DU's) comments on the State Water Resource Control Board's (SWRCB's) Preliminary Draft State Wetland Definition and Procedures for Discharges of Dredged or Fill Materials to Waters of the State (July 21, 2017 version) (Procedures). DU also submitted comments on the SWRCB's January 28, 2013 and June 17, 2016 versions of the Procedures. DU wishes to thank the SWRCB for the substantial improvements it has made to previous versions of the Procedures and that are now incorporated in the current document.

DU is a nonprofit waterfowl and wetland habitat conservation organization with over 1 million members, supporters, and volunteers in the United States. Our mission is to conserve, restore, and manage wetlands and associated habitats for North America's waterfowl. These habitats also benefit other wildlife and people. DU has raised over \$4 billion for conservation and conserved more than 14 million acres of prime wildlife habitat in the U.S., Canada, and Mexico. We have conserved over 5 million acres of habitat in the U.S. alone. DU is the largest and most effective private waterfowl and wetlands conservation organization.

DU supports the SWRCB's goal of ensuring no overall net loss and long-term net gain in the quantity, quality, and permanence of wetland acreage and values. However, to accomplish this, it is critical to streamline permit processes for voluntary wetland restoration and enhancement projects. The Procedures include a somewhat streamlined application process for Ecological Restoration and Enhancement Projects (EREPs) (i.e., an alternatives analysis and compensatory mitigation plan are not required). However, additional changes to the application process for EREPs are needed to avoid creating an unnecessary regulatory burden on these projects and deterring landowners from voluntarily undertaking important wetland restoration and enhancement work.



EREPs include only voluntary wetland restoration and enhancement projects that are undertaken in accordance with the terms and conditions of a binding stream or wetland enhancement or restoration agreement or a wetland establishment agreement between the landowner and one of several state or federal resource agencies or non-governmental conservation organizations, or directly by a state or federal resource agency. By definition, EREPs are already subject to rigorous quality control assurances by resource agencies/organizations with extensive knowledge of wetlands and an emphasis on their conservation. These projects are already subject to monitoring and reporting as required by the binding stream or wetland enhancement or restoration agreement or wetland establishment agreement through which the project was undertaken (private lands) or through routine assessments conducted by the managing resource agency to determine progress in accomplishing habitat management objectives (public lands). Therefore, no additional monitoring or reporting should be required for these projects.

DU's specific comments on and requested revisions to the Procedures are provided below.

- 1. Timeline.** The Procedures should provide a timeline for reviewing/approving complete permit applications. Suggested language for the required timeline follows: "The Regional Water Quality Control Board (RWQCB) may make only one request for additional information in response to an application. If the prospective permittee does not provide all of the requested information, then the RWQCB will notify the prospective permittee in writing within 30 calendar days of the date of receipt of the supplemental information that the application is still incomplete. The application review process will not commence until all of the requested information has been received by the RWQCB. The prospective permittee shall not begin the proposed activity until either: a) Prospective permittee is notified in writing by the RWQCB that the proposed activity may proceed under the issued permit; or b) 45 calendar days have passed since the notification of receipt of a complete application and the prospective permittee has not received written notice from the RWQCB that the proposed activity may proceed under an issued permit."
- 2. Permit Fees.** The Procedures should include a fee structure for permitting projects. Knowing required fees up-front will aid in project planning and budgeting. It will take less time for RWQCB staff to review applications for EREPs than many other types of projects. Therefore, the permit fees for EREPs should be lower than for other types of projects. In addition, many of these projects are funded with grant dollars and the funding entities desire that most of those dollars be applied directly to on-the-ground restoration and enhancement activities. Also, lower permit fees for these projects will encourage voluntary wetland conservation efforts, which in turn, will help achieve the SWRCB's goal of ensuring no overall net loss and long-term net gain in the quantity, quality, and permanence of wetland acreage and values.
- 3. Items Required for a Complete Application – Page 4, Subsection b.** As currently worded, this subsection implies that an applicant would need to be through the U.S. Army Corps



of Engineers' (Corps') permitting process before the RWQCB would consider an application complete. This could significantly delay the RWQCB's review and processing of an application. This subsection should be revised to read: "If Waters of the U.S. are present, a final aquatic resource delineation report, with a preliminary or approved jurisdictional determination issued by the Corps, if available. In all cases, a preliminary or approved jurisdictional determination must be provided prior to issuance of the permit."

4. **Items Required for a Complete Application – Page 4, Subsection e.** As currently worded, this subsection implies that an applicant would be required to map all aquatic resources that may qualify as waters of the state outside the boundary of the project that could be indirectly affected by the project. This could be extremely difficult and time consuming (e.g., would the applicant have to map an entire watershed or groundwater basin?). We suggest that mapping be required for all aquatic resources that may qualify as waters of the state that could be directly affected by the project and a qualitative description be required for all aquatic resources that may qualify as waters of the state that could be indirectly affected by the project.

5. **Additional Information Required for a Complete Application – Page 6, Subsection a.** Current delineation standards at the federal level do not require field data collection to be completed during a specific time of year as long as the delineator can make judgements and document conditions based on existing data to define wetland boundaries. We recommend that the federal delineation standards be accepted and the option to request supplemental field data not be left to the discretion of RWQCB staff. Such a request could substantially delay EREPs (especially if drought conditions are present).

6. **Additional Information Required for a Complete Application – Page 6, Subsection b.** Clarity on what specific aspects of climate change need to be addressed in the assessment should be provided and not left to the discretion of RWQCB staff. Otherwise, applicants will not know what is expected and this requirement will not be applied consistently. An assessment of the potential impacts associated with climate change should not be required for EREPs.

7. **Additional Information Required for a Complete Application – Page 7, Subsection e.** DU concurs with the suggested revisions to this subsection that are provided in the Central Valley Joint Venture's (CVJV's) comment letter. The last paragraph in this subsection should be revised to read: "Prior to issuance of the Order, the applicant shall submit a final restoration plan. For Ecological Restoration and Enhancement Projects, the restoration or enhancement plan provided as part of the binding stream or wetland enhancement or restoration agreement or wetland establishment agreement shall satisfy this requirement."

8. **Additional Information Required for a Complete Application – Page 7, Subsection f.** DU concurs with the suggested revisions to this subsection that are provided in the CVJV's



comment letter. This subsection should be revised to read: “Ecological Restoration and Enhancement Projects shall provide a description of project objectives, performance standards used to evaluate attainment of objectives, the timeframe and responsible party for determining if objectives have been met, and the proposed schedule. These requirements, as well as the water quality monitoring requirements of subsection (d) above, may be met by providing copies of similar materials already produced as a requirement of the binding stream or wetland enhancement or restoration agreement or wetland establishment agreement for the project. Monitoring and reporting to ensure that Ecological Restoration and Enhancement Projects are being managed and maintained consistent with their intended purpose shall be limited to that which is required by the binding stream or wetland enhancement or restoration agreement or wetland establishment agreement through which the project was undertaken (private lands) or which is routinely conducted by the managing resource agency to assess progress in accomplishing habitat management objectives (public lands). These Procedures do not require any additional monitoring or reporting for Ecological Restoration and Enhancement Projects.”

9. **Definition of Ecological Restoration and Enhancement Project – Page 13.** DU suggests that the California Delta Conservancy be added to the list of specific agencies for which a binding stream or wetland enhancement, restoration, or wetland establishment agreement is recognized. DU also concurs with the suggested revisions to this subsection that are provided in the CVJV’s comment letter. There are at least two local public agencies with the primary function of maintaining wildlife and wetland habitats; the Suisun Resource Conservation District and Grassland Resource Conservation District. Therefore, local agencies that have wetland conservation as a primary function should be added to the list of entities for which a binding stream or wetland enhancement, restoration, or wetland establishment agreement is recognized.

DU thanks the SWRCB for the opportunity to provide our suggestions for further improvements to the Procedures. We look forward to continuing dialogue with the SWRCB and working together to develop Procedures that will facilitate voluntary wetland restoration and enhancement projects and help to ensure no overall net loss and a long-term net gain in the quantity, quality, and permanence of wetland acreage and values.

Sincerely,

Mark Biddlecomb, Director