

**Stream and Wetlands System Protection Policy**  
**February 6, 2007 Public Workshop**  
**Summary of Public Comments**

The San Francisco Bay Regional Water Quality Control Board (Water Board) conducted a public workshop regarding the proposed Stream and Wetlands System Protection Policy (Policy) on February 6, 2007 in Oakland. This document summarizes public comments received at the meeting and written comments submitted for the comment period ending March 9, 2007.

**Summary of Comments**

Policy Need

- It is necessary to protect and restore the physical characteristics of stream and wetland systems, including their connectivity and natural hydrologic regimes, in order to achieve water quality protection goals.
- The Water Board needs to fill the water quality protection void left from local agencies' lack of willingness to advance stream protection measures.
- With upwards of 90% of riparian areas lost, the Water Board needs to take the lead in the protection and restoration of this degraded resource.
- Intact stream and wetland systems can curb the effects of global climate change including sea level rise and changes in rainfall and runoff patterns.
- The experience of Hurricane Katrina has shown the importance of wetland protection for flood control.
- The Water Board needs to address existing problems throughout the watershed, including legacy flood control problems and permit compliance issues, before proposing any new Policy.
- The Water Board needs to develop an analysis of the gaps in current stream and wetlands system regulation, whether it is in the authority of the Water Board to fill these gaps, and if not, who should be addressing any of the identified problems.
- The Water Board should consider whether it is the appropriate body to develop and implement such a potentially broad reaching policy.

Policy Approach

- The Policy needs to protect the broad range of functions and values provided by stream and wetland systems.
- When developing Policy the Water Board needs to consider and balance all competing interests which affect water quality.
- A clear, well-defined, and achievable scope targeted on the identified needs is critical to Policy success.
- The Policy is following the trend in environmental protection of more integrated multi-objective planning, examining cumulative impacts, and moving away from project-by-project permitting.
- How will the Policy address cumulative effects?

- Policy development, including any performance criteria and requirements, should err on the side of greater protection in order to account for shifting environmental conditions due to global climate change.
- The Water Board should direct a comprehensive analysis of all limiting factors which affect beneficial uses by watershed and based on the results of this analysis coordinate the necessary regulatory actions with other agencies to address the identified limiting factors affecting water quality.
- The San Francisco Estuary Project's update to the Comprehensive Conservation and Management Plan is a valuable stakeholder forum for Policy development.
- The Water Board should evaluate whether there are more efficient ways of achieving Policy goals.
- The Water Board should utilize its ability to recommend actions to state and local jurisdictions and to participate in ongoing regional planning efforts to ensure that water quality issues are adequately addressed by other jurisdictions.
- The Water Board is not qualified to oversee or recommend actions on significant land-use decisions throughout the region.
- The Water Board should allow for the existing permit conditions of emerging efforts, such as the Municipal Regional Permit, to be assessed before proposing any new regulations for adoption.
- The Water Board should consider the proven effectiveness of the local agencies' current regulations (i.e., stream setbacks, vegetation retention requirements, countywide National Pollution Discharge Elimination System (NPDES) permit requirements, and other related watershed protection measures) before proposing any new regulatory requirements.

### Science

- Vegetated riparian corridors provide bank stability, reduce erosion and sediment transfer, moderate stream temperatures, and protect the physical, chemical, and biological characteristics of the stream and wetlands system.
- Preserving the connectivity of riparian corridors will provide wildlife access to water, food, and cover.
- Many stormwater outfalls discharge directly to the stream channel and bypass the riparian area without taking advantage of the infiltration potential of these zones.
- Flood water storage zones can be established on agricultural land, land that routinely serves recreational purposes, and on compatible low-lying land adjacent to San Francisco Bay.
- In many watersheds historical degradation from past land-use has created biological constraints that limit what is achievable.
- Geomorphic principles of stream stability serve as a valuable basis for restoring stream and wetlands system functions.
- Water supply practices have affected the continuity of stream flows and degraded stream and wetlands system integrity.

### Regional Board Authority

- The Policy clearly falls within the existing jurisdiction of the Water Board as granted under the Porter-Cologne Water Quality Control Act (Porter-Cologne Act).

- Land-use policy, social issues, and non-water quality environmental issues identified as Policy goals and which may be proposed for consideration in Policy alternative implementation plans are not standards of water quality.
- The Policy water quality objectives and beneficial uses are focused on stream and wetlands system functions and not on limits on water quality or beneficial uses of water itself as required by the Porter-Cologne Act.

#### Interagency Coordination

- What other federal and state agencies will be involved in Policy implementation and what will be their specific roles and funding commitments?
- The Water Board should consult with the California Department of Fish and Game, US Army Corps of Engineers, and other local, state, and federal resource agencies in determining whether the Policy is consistent and sustainable with existing regulations, plans, and ordinances.
- The Water Board should work through existing resource agency associations to examine Policy alternatives and educate member agencies on Policy requirements.
- The Water Board should implement a parallel permitting process, as opposed to sequential review, to ensure consistent review with other permitting agencies.
- The Policy should be coordinated with other plans such as the Bay Area Integrated Regional Water Management Plan (IRWMP), the Wildlife Action Plan, the US Fish and Wildlife Service Tidal Marsh Recovery Plan, and the Baylands Ecosystem Habitat Goals.
- Certain channel maintenance requirements mandated by the US Army Corps of Engineers may be incompatible with Policy requirements and will need to be coordinated accordingly.
- How does the Policy relate to the emerging Wetland and Riparian Area Protection Policy currently under development by the State Water Resources Control Board?

#### Policy Implementation

##### *Policy Application*

- The Policy should provide a wetland definition that is broader than the US Army Corp of Engineers definition and that fully protects the full range of California's wetlands including seasonal and isolated wetlands no longer under federal wetland jurisdiction.
- The Policy must clearly define terms such as streams, wetlands, riparian areas, riparian vegetation, and functioning riparian corridor in order to ensure consistent Policy application.
- Definitions used in the Policy should be consistent with California Department of Fish and Game, US Army Corp of Engineers, and other state and federal resource agencies to ensure consistency in Policy application.
- Any prescribed guidance on wetland and riparian area identification needs to be science-based and clarify who defines and delineates these areas.
- Will the Policy regulate any currently unregulated activities?
- Will the Policy impose any new regulations on any existing regulated activities?
- Will the Policy regulate the private and public pumping of groundwater near streams to control the adverse hydrogeological effects on surface water quality?

### *Permit Conditions*

- How will similar types of projects in different watersheds be evaluated?
- Any methodology to determine permit conditions needs to be cost-effective, equitable, provide useful information, and be applicable region-wide.
- The Policy should follow apply the no net loss goal for wetland acreage to wetland and riparian area functions and values.
- The Water Board should examine issuing a waiver of waste discharge requirements for activities in which agencies use management measures identified in effective manuals.
- What stream setback and/or methodology to determine setback will the Policy dictate?

### *Waste Discharge Prohibitions*

- Violating the potential waste discharge prohibition will in some instances be unavoidable for safety reasons, may be difficult to enforce in a rural landscapes, and could be a challenge for municipal public works departments.

### *Alternative Implementation Plans*

- What will be the requirements and development process for Policy alternative implementation plans?
- Will the Policy allow for the use of existing watershed plans as Policy alternative implementation plans?
- What incentives will the Water Board provide to support alternative implementation plan development?

### *General*

- The Water Board needs to consider both the effectiveness and feasibility of any suggested implementation measures.
- Implementation of the Policy should focus on creating incentives for local agencies and permit applicants to proactively protect and restore stream and wetland systems.
- The Water Board needs to carefully examine the circumstances surrounding exemptions.
- The Water Board should focus efforts to encourage non-regulatory and voluntary implementation approaches.
- The Policy needs to provide adequate guidance to permit applicants and Water Board staff on how to protect and restore the water quality functions of stream and wetland systems.
- What information will be used to establish the baseline for restoration targets?

### *Regulatory Program Interaction*

- How will existing Water Board regulations and permits be different under the Policy?
- How does the Policy relate to existing provisions within the Basin Plan?
- How will the Policy affect the forthcoming 2008 Clean Water Act 303(d) List of Water Quality Limited Segments?

- How does the Policy relate to the Hydromodification Management Plan requirements and the Municipal Regional Permit process currently underway?

#### CEQA Analysis

- The Water Board needs to provide a detailed project description in the upcoming Staff Report to enable participants to make meaningful comments on the scope of CEQA review and the potential environmental impacts of the Policy.
- The Policy is likely to have significantly adverse impacts to grazing, farming, timber harvest, maintenance of roads and stream crossings, restoration projects, surface water diversions, and groundwater production.
- The Policy's CEQA analysis must examine how restrictions on the economic use of farm, ranch, and timber harvest properties may cause an unintended consequence of converting these lands to more intensive land-uses.

#### Economics

- Policy economic benefits include protecting water quantity and quality and avoiding the costs of alternatives such as constructing new treatment facilities and desalination plants, reducing sediment removal costs, preventing damage from floods, conserving wildlife, and protecting existing state investments from the impacts of global climate change.
- Maintaining stream and wetlands system integrity is ecologically and economically superior to filling, dredging, and channelizing these systems.
- Protection of wildlife habitat will prevent the formal listing of additional species under the federal Endangered Species Act and California Endangered Species Act, thus minimizing the likelihood of unnecessary project delays, litigation, and project costs.
- The Water Board should develop an economic model that considers the need to develop housing and that fully accounts for all benefits and costs associated with the Policy.
- The Policy will add more regulatory requirements making an already cumbersome permitting process more expensive and difficult.

#### Funding & Resources

- What resources (i.e., financial, technical) will be available for local jurisdictions to implement the Policy?
- Restoration funding needs to target the causes and not the symptoms of water quality degradation.
- Funding for stream and wetlands system protection and restoration can come from IRWMP and Proposition 50, Proposition 84, and Proposition IE.
- The bond propositions (i.e., 84 and 1E) can fund capital projects but are not allowed to fund the associated implementation costs.
- The biggest challenge is to secure funding for the long-term maintenance and monitoring.
- The costs associated with Policy implementation, including foreseeable impacts to existing local agency programs, should be fully disclosed so they can be planned for accordingly.

- The Water Board should recognize financial constraints on local agencies and provide flexibility to ensure that water quality objectives and implementation measures are economically attainable and technically feasible.
- Is the Water Board fully qualified in terms of staffing and available funding to fully implement the anticipated Policy?
- Will the Regional Board be willing to work with local agencies to shift priorities and lower requirements for other water quality programs to allow for available resources to focus on Policy goals?
- The Policy may expand Water Board jurisdiction and overlap with existing California Department of Fish and Game and US Army Corp of Engineers jurisdiction. This parallel permitting may take time and resources away from other important water quality issues.

### **Information**

For more information about the proposed Stream and Wetlands System Protection Policy contact Ben Livsey at [Blivsey@waterboards.ca.gov](mailto:Blivsey@waterboards.ca.gov) or 510-622-2308. Additional information can also be found on the Water Board website at <http://www.waterboards.ca.gov/sanfranciscobay/streamandwetlands.htm>.