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August 15, 2016

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Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95814-2000

Re: Procedures for Discharges of Dredged or Fill Materials to Waters of the State

Dear Ms. Townsend,

The Orange County Transportation Authority (OCTA) appreciates the opportunity to comment on the Proposed Procedures for Discharges of Dredged or Fill Materials to Waters of the State (Proposed Procedures), formally known as the Wetlands Policy. While OCTA acknowledges the efforts of the State Water Resources Control Board (SWRCB) to create a more consistent statewide regulatory scheme for protecting wetlands, OCTA is concerned that a redefinition of "wetlands" would lead to additional environmental compliance processes that could adversely impact the development and delivery of vital transportation projects by exposing these projects to additional costs and review. OCTA encourages the SWRCB, prior to adoption, to consider and provide full cost implications associated with the proposed changes, define how this proposal could impact permitted projects currently undergoing the environmental review process, and explain how the Proposed Procedures will create statewide consistency when the application is going to be determined on a case-by-case basis.

As Orange County's multi-modal transportation agency, OCTA's core mission includes the planning and implementing of the region's highway, road, rail, and transit projects to enhance the mobility of Orange County. In 2006, Orange County voters approved Measure M2 (M2), the county's sales tax transportation measure which will provide approximately \$14.4 billion in new funding for multi-modal transportation improvement projects and programs. Recognizing the impact that improvements may have on the environment, M2 also includes two innovative environmental programs to address biological resources impacts (Environmental Mitigation Program) and enhance water quality (Environmental Cleanup Program). Each of these programs has anticipated revenues of approximately \$300 million over the life of M2.

Ms. Jeanine Townsend
August 15, 2016
Page 2

As part of the Environmental Mitigation Program, OCTA has acquired over 1,300 acres of conservation lands that will be protected in perpetuity and funded over \$10 million of habitat restoration projects. The Environmental Mitigation Program provides advanced mitigation to off-set environmental impacts resulting from the M2 freeway projects. OCTA is currently coordinating with the SWRCB in order to obtain a General 401 Certification to approve this advanced mitigation which will streamline the delivery of M2 freeway projects. The Environmental Cleanup Program has provided competitive grants to Orange County cities and the County of Orange (County) for over 140 projects, totaling approximately \$40 million. These projects will significantly improve water quality and the quality of life for the County's residents.

OCTA is concerned that these Proposed Procedures would require additional review and analyses, needlessly increasing documentation and consuming resources that could otherwise be used for mitigation efforts, as outlined below. For instance, Page 4 (2b.) projects, subject to the discretion of a local permitting agency, could be required to perform an assessment to account for a project's potential climate change impacts. This requirement is proposed without reference to any established and scientifically backed metrics, or technical advisory as to how an agency would conduct this assessment.

In addition, on Page 4 (2d.i.), agencies could also be required to develop and provide watershed profiles for project areas that account for the overall abundance, diversity, and condition of aquatic resources in their evaluation area. Similar to the proposed climate change assessment, minimal guidance is provided to assist agencies in performing these profiles. The delivery schedule and the available fiscal resources of projects under development could be at risk if these assessments were required. To ensure the timely delivery of M2 capital projects, OCTA believes that voter-approved sales tax-funded projects should be exempt from any new wetlands definition and any of the additional review requirements included in the Proposed Amendments.

In addition, as part of OCTA's Environmental Mitigation Program, OCTA has conducted an extensive County-wide jurisdictional delineation mapping effort, including a wetlands assessment. Based on the results of this mapping effort, future freeway impacts have been estimated and advanced mitigation is currently underway. By partnering with state and federal agencies, OCTA can be assured that these efforts are consistent with existing federal and state standards and definitions. Accordingly, appropriate mitigation has been developed and committed to by OCTA. However, with the adoption of a new wetlands definition, the efforts made to perform these calculations and advanced mitigation would be

Ms. Jeanine Townsend
August 15, 2016
Page 3

compromised. Without specific technical information and a detailed timeline for the implementation of this new definition, the costs associated with these proposed amendments have not been factored in with the development of the M2 project budgets. Additional costs associated with these Proposed Procedures may create additional financial constraints, leaving less funding for project implementation efforts.

The Proposed Procedures also do not provide enough background information on how this expanded definition will impact already permitted projects. Projects not previously considered to impact wetlands may now be determined to have impacts under the proposed expanded definition of "wetlands." The SWRCB should consider a grandfather provision which will protect projects approved under the current framework. In addition, the proposed definition will be more expansive than the United States Army Corps of Engineers' definition of jurisdictional wetlands. This would lead to increased mitigation requirements, project schedule delays, and additional project costs.

Finally, the Proposed Amendments clearly state that one of the primary reasons for pursuing a revised definition of "wetland" is to provide greater statewide consistency. However, if the discretion is left to the local water boards to determine jurisdictional limits (waters of the state and wetlands) on a case-by-case basis, OCTA believes statewide consistency would not be achieved. The Proposed Amendments afford authority to the local water boards absent a clear definition of features that would be considered waters of the state. Without this definition, the determination by each water board could vary greatly throughout the state, thereby negating the goals of this rulemaking entirely. Furthermore, many regional water boards have pursued wetlands mitigation efforts based on the current framework which, like OCTA's projects, could be put at risk with this new definition. For these reasons, OCTA believes that the SWRCB should articulate how the revised definition will provide greater consistency statewide. Inconsistent interpretations of "wetlands" and waters of the state could increase the potential for litigation.

Ms. Jeanine Townsend
August 15, 2016
Page 4

We appreciate the efforts of SWRCB in providing the opportunity to comment. On behalf of the Orange County community, OCTA appreciates your time and consideration, and we look forward to working with you to create a streamlined, comprehensive means of protecting state wetlands. If you have any questions about the concerns outlined in this letter, please contact Kristin Essner, Principal Government Relations Representative, at (714) 560-5754 or at kessner@octa.net.

Sincerely,

A handwritten signature in blue ink, appearing to be 'D. Johnson', with a long horizontal line extending to the right.

Darrell Johnson
Chief Executive Officer

DJ:bb

- c: Malcom Daughtery, Director, California Department of Transportation
- Ryan Chamberlin, District Director, California Department of Transportation, District 12
- Lucy Dunn, Chief Executive Officer, Orange County Business Council
- Keith Dunn, Executive Director, Self-Help Counties Coalition
- Heather Stratman, Chief Executive Officer, Association of California Cities, Orange County