

James Mark Haussener

August 18, 2016

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:

From an outsider position, the question of why are these amendments being proposed is paramount. The "official" position is that staff in 2016 is responding to a Board Resolution from 2008 that used data from a third party concerning loss of wetlands during the 1990's. Yet, when one listens into a workshop or the Board's Public Hearing, one hears about responding to the State Auditor's Report on the Water Quality Certification Program; Lean 6 Sigma; Governor's Office; "staff needs to do something;" and, status quo.

Board Resolution No. 2008-0026 states "California continues to lose "functional wetlands" at an increasing rate despite the efforts of the State's 401 Water Quality Certification Program. This fact is documented in a State Water Board research study contracted with UCLA titled *An Evaluation of Compensatory Mitigation Projects Permitted Under Clean Water Act Section 401 by The California State Water Resources Control Board, 1991-2002.*" The study does not state that there is a loss of functional wetlands. It states "Given the low ecological condition of most mitigation wetlands, it seems likely that many mitigation projects did not replace the functions lost when wetlands were impacted, and hence that the goal of "no net loss" of wetland functions was not met, but this study cannot provide a definitive conclusion on this issue."

My take away from the UCLA study is that there needs to be improved permit conditions, including clarity, that lead to better mitigation requirements. Simply put, the "Boards" need to do a better job of succinctly describing what they want. To quote the study " Our study found relatively high levels of compliance with mitigation permit conditions."

The staff report states " between January 2007 and April 2009, the Corps recorded an annual rate of 300 to 400 acres of wetlands and other jurisdictional aquatic habitat losses in the state." This statement is based upon the California Natural Resources Agency's 2010 State of the State's Wetlands Report. THAT is not what the Report states. It states "Based on records from January 2007 through April 2009, the USACE has recorded 300 to 400 acres per year of impacts to wetlands and other jurisdictional aquatic habitats in California."

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The Staff Report does not quantify the loss of wetlands in federal waters, state waters, within federal jurisdiction or solely within state jurisdiction. Which, begets the question of why are these proposed amendments necessary?

The Staff Report indicates the major indicators of stress in the west are ditching, damming, nonnative vegetation, surface hardening and vegetation removal. A question to the Board is which of these major indicators are these Amendment addressing?

Board Resolution No. 2008-0026 directs the development of a Policy to protect wetlands from dredge and fill activities. This is different than the Clean Water Act requirement to regulate discharges of dredged or fill material to waters of the United States. What specific policy or policies are these Amendments addressing?

If one of the goals of these amendments is to provide consistency across the state, why is the determination of whether or not a wetland feature is also a water of the state under the jurisdiction of the Water Boards to be decided on a case-by-case basis?

The State Auditor noted the different applications that are used in the different regional boards and the range in the total number of pages of each of these applications. In the desire to "streamline" it appears that implementation of these proposed amendments will cause all applicants to submit the maximum number of pages.

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,

