



San Diego County Water Authority

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August 18, 2016

Sent via Electronic Mail to: commentletters@waterboards.ca.gov

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OTHER REPRESENTATIVE

County of San Diego

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

RE: Statewide Dredged or Fill Procedures

Dear Chair Marcus and Members of the Board:

Thank you for the opportunity to comment on the proposed Procedures for Discharges of Dredged or Fill Material to Waters of the State. The San Diego County Water Authority is the wholesale water agency in San Diego County with 24 member retail agencies serving a population of 3.2 million people. The Water Authority is implementing a comprehensive Natural Community Conservation Plan/Habitat Conservation Plan in portions of San Diego and Riverside counties to provide mitigation for future projects and operations. The Water Authority takes protection of wetlands seriously, and as part of the NCCP/HCP has committed to a Wetland Protection and Mitigation Program with a "no net loss of wetlands" standard.

We submit the following comments for your consideration.

Procedures should Not Apply to Waters Subject to Federal Jurisdiction

According to the State Water Board's June 2016 Staff Report, the proposed Procedures were developed to strengthen protections for waters of the state (WOTS) no longer protected under the Clean Water Act following U.S. Supreme Court decisions. Application of the proposed Procedures should therefore be limited to WOTS that are not waters of the U.S. subject to federal jurisdiction. This will limit unnecessary duplication with federal requirements that are already protective of wetlands, and will streamline the application review process for Regional Water Board staff that is often constrained by limited time and resources.

A public agency providing a safe and reliable water supply to the San Diego region

Streamline Application Review Process

The proposed Procedures should be revised to provide greater clarity and streamline the application submittal and review process. There is currently frequent delay and inconsistency across the Regional Water Boards in processing applications and issuing 401 certifications. We are concerned that implementation of these Procedures will further exacerbate these delays. As currently drafted, the Procedures would create additional and often unnecessary requirements. The Procedures should provide guidelines to Regional Water Board staff on timelines for their review and processing of applications, with shorter periods for routine applications.

Limit Case-by-Case Considerations

Under the proposed Procedures, the Regional Water Boards would determine on a case-by-case basis whether a particular feature, that is not a water of the U.S., is a WOTS. While we understand the need to fill the gap created by SWANCC through the Porter-Cologne Act, the proposed Procedures fail to define or provide guidance on how to make the determination of what is a WOTS. The State Water Board should provide a clear definition of WOTS, including a list of features that are not jurisdictional. This will provide clarity for the regulated community, streamline the application review process, and support consistency across the different Regional Water Boards.

Provide Consistency with Federal Requirements

Procedures should be made consistent with federal definitions, regulations and practices, which are very protective of wetlands. Federal agencies have continued to revise their regulations to enhance wetland protections. For example, in 2008 the U.S. Army Corps of Engineers (Corps) and EPA jointly promulgated regulations revising and clarifying requirements for compensatory mitigation, with more comprehensive standards to promote no net loss of wetlands. Under federal law, the Corps is responsible for identifying the Least Environmentally Damaging Practicable Alternative (LEDPA). The Water Boards should defer to the Corps' LEDPA determination, and a separate alternatives analysis should be not required for a 401 certification. By ensuring consistency with federal requirements, the proposed Procedures will reduce unnecessary duplication and delays in permitting, while at the same time protecting wetlands.

Other Recommendations to the Proposed Procedures

Items Required for a Complete Application

Revise Section IV. A. 1.d., pages 3-4. A map submitted for a Corps' preliminary jurisdictional determination that includes all potential WOTS should satisfy the requirement for a map submission (change from "may satisfy" to "shall satisfy").

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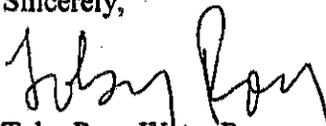
Additional Information Required for a Complete Application

Delete Section IV. A. 2. a., page 4, which would require wetland delineations conducted in the dry season to include supplemental field data from the wet season, on a case-by-case basis. This is unnecessary, because Corps delineation manuals provide for wetlands delineation in the dry season.

Delete Section IV. A. 2.b., page 4, which requires information that should already be analyzed under CEQA for the project. The Water Boards should rely on the project's CEQA documentation for the information requested in this section.

Thank you for consideration of our comments. Please contact Lesley Dobalian with any questions at (858) 522-6747.

Sincerely,

A handwritten signature in black ink, appearing to read "Toby Roy". The signature is written in a cursive style with a large, looped initial "T".

Toby Roy, Water Resources Manager
Water Resources Department

