

Index for Response to Comments; Letter #8				
Commenter	Comment Number	Representative Comment	Major Category Number	Major Category
Coachella Valley Water District	8.1	8.1	44	Waters of the State Definition/Delineation
Coachella Valley Water District	8.2	8.2	11	Complete Application (case-by-case basis)
Coachella Valley Water District	8.3	8.3	43	Water Board Regulatory Authority
Coachella Valley Water District	8.4	8.4	43	Water Board Regulatory Authority
Coachella Valley Water District	8.5	8.5	43	Water Board Regulatory Authority
Coachella Valley Water District	8.6	8.6	40	Storm Water Facilities Exclusion
Coachella Valley Water District	8.7	8.7	31	Overall Opposition



Established in 1918 as a public agency
Coachella Valley Water District

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Jeanine Townsend, Clerk of the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-2000

Comment Letter # 8

Dear Ms. Townsend:

Subject: Proposed Amendments to the California Ocean Plan and Inland Surface Waters, Enclosed Bays, and Estuaries of California Plan to Include Procedures for Discharges of Dredged or Fill Materials to Waters of the State (Wetlands Policy)

Coachella Valley Water District (CVWD) was formed in 1918 expressly for the purpose of capturing floodwaters and mountain runoff for groundwater replenishment. Today, CVWD provides domestic, sanitation, recycled water, agriculture irrigation/drainage, storm water protection, flood control services, and operates and maintains three groundwater replenishment facilities. Also, CVWD operates and maintains the 123 mile Coachella Canal, a branch of the All-American Canal, which delivers Colorado River water to some of the most productive farmland in the world.

CVWD has reviewed the proposed amendments to the Water Quality Control Plans for Ocean Waters and Inland Surface Waters and Enclosed Bays and Estuaries regarding the inclusion of procedures to address discharges of dredged or fill material to all waters of the state. CVWD

believes it is important for there to be consistency between state and federal regulations governing dredge and fill activities to avoid the uncertainty that is created when dual standards exist. Considering the proposed changes to federal Waters of the U.S. (WOTUS) regulations which are currently being litigated, CVWD believes the subject amendments are premature and should be postponed until there is certainty regarding WOTUS regulations. CVWD also believes

that there is a need for flexible, case-by-case requirements applicable to the highly variable hydrological conditions that occur within different regions of California. This is why California's Porter Cologne Act created separate Regional Water Quality Control Boards.

8.1

8.2

Although the proposed procedures for discharges of dredge and fill material attempt to streamline and improve regulatory effectiveness, the new procedures are overreaching, go beyond regulating discharges to wetland waters of the state, and create additional confusion by expanding the scope of potential waters to be protected. The proposed procedures include all waters of the U.S. already regulated under the Clean Water Act's section 404 permitting program and section 401 certification requirements, and non-wetland waters of the state already regulated under the California Department of Fish and Wildlife's streambed alteration program. The proposed procedures exceed the SWRCB's authority and would functionally expand the SWRCB's jurisdiction to regulate facilities not currently regulated as waters of the state. The SWRCB is committed to increasing the quantity of wetlands that qualify as waters of the state, increasing duplication and confusion, and decreasing regulatory effectiveness. Overlapping authorities will ultimately create delays, not consistency. Instead, the SWRCB should focus on establishing a regulatory program to protect waters that fall outside federal regulation.

8.3

The proposed procedures create unnecessary and inappropriate SWRCB regulatory jurisdiction of CVWD's groundwater, stormwater, flood control, and irrigation facilities. The proposed procedures will cause CVWD's facilities to be regulated based on the state's definition of "wetland," and would require a project application submittal to operate, maintain and repair critical facilities. CVWD operates and maintains 123 miles of canal, 1,000 acres of groundwater replenishment basins, 130 acres of percolation ponds, 330 acres of stormwater retention basins, 73 miles of flood control dikes, and over 100 miles of swales and ditches. By expanding jurisdiction to cover these facilities, the proposed procedures will dramatically increase CVWD's regulatory burden and potentially stall critical projects in regulatory gridlock - all without added benefit to waters of the state.

8.4

By reference to federal regulation, the SWRCB exempts irrigation and drainage ditch maintenance from requiring a permit for discharges of dredge and fill material. But, also by reference to federal regulation, the SWRCB's exemption does not include ditches and man-made conveyances, many of which are used for farming and ranching. The Coachella Canal is a man-made conveyance that carries Colorado River water 123 miles to supply CVWD's agriculture irrigation system. Ditches, man-made canals, and water conveyances should be specifically excluded from the definition of waters of the state.

8.5

Operation and maintenance of CVWD's 1,000 acres of groundwater replenishment and 330 acres of stormwater retention basins, 73 miles of flood control dikes, and over 100 miles of swales and ditches currently do not require dredge and fill permits for maintenance activities. However, the federal exemption is not clear, and therefore the SWRCB's exemption is not clear, for regulation of groundwater replenishment, stormwater, or flood control facilities. These facilities are critical to life in the desert because they capture and infiltrate water into the drinking water aquifer, as well as protect property and public safety. Groundwater replenishment, stormwater, and flood control facilities should be specifically excluded from the definition of waters of the state.

8.6

August 18, 2016

The SWRCB's amendments to the Water Quality Control Plans for Ocean Waters and Inland Surface Waters and Enclosed Bays and Estuaries regarding the inclusion of procedures to address discharges of dredged or fill material to all waters of the state is overreaching and create unfair regulatory burden. CVWD respectfully suggests withdrawing the proposed amendments and creating a policy based on scientific and technical rationale that provides clear definition of waters of the state subject to regulation which are consistent with the purpose of the California Water Code and federal regulations.

8.7

Thank you for the opportunity to comment on the proposed amendments.

Sincerely,



Steve Bigley
Director of Environmental Services

Submitted electronically to: commentletters@waterboards.ca.gov

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