



# CVCWA Central Valley Clean Water Association

Representing Over Sixty Wastewater Agencies

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May 17, 2011

Via Electronic Mail

Charles Hoppin, Chair  
c/o Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24th Floor  
Sacramento, CA 95814

[commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

**Re: Comments on Initial Study to Wetland Area Protection Policy and Dredge and Fill Regulations**

Dear Chairman Hoppin and Members of the Board:

The Central Valley Clean Water Association (CVCWA) appreciates the opportunity to submit the following comments on the State Water Resources Control Board's (State Water Board) Notice of Preparation (NOP) for a Draft Program Environmental Impact Report (Draft Program EIR) for the proposed Wetland Area Protection Policy and Dredge and Fill Regulations (Wetland Policy).

CVCWA is a non-profit organization whose membership consists of more than 50 publicly-owned wastewater treatment and collection agencies in the Central Valley. We represent our members in regulatory matters affecting surface water discharge and land application with a perspective to balance environmental and economic interests consistent with applicable law. Accordingly, the Draft Program EIR for the Wetland Policy is of significant interest to CVCWA's members.

**I. CVCWA supports the State Water Board exclusion of constructed wetlands from the definition of the Project in the Draft Program EIR for the Wetland Policy**

CVCWA supports the exclusion of constructed wetlands from regulation under the Wetland Policy. The State Water Board's Initial Study for the Wetland Policy indicates that the Project is the adoption of a proposed Wetland Area Protection Policy and regulations governing

the discharge of dredged or fill materials into the waters of the State (Project). The State Water Board's Initial Study for the Wetland Policy (Wetland Policy Initial Study) indicates that constructed wetlands are excluded from the requirements of the Project. (Wetland Policy Initial Study at p. 17.) The Wetland Policy Initial Study defines a "constructed wetland" as "... a wetland that is placed in an area where a wetland did not exist before, and which is specially engineered to obtain specific services, such as wastewater treatment, surface water drainage, or agricultural water supply." (Wetland Policy Initial Study at p. 17.) The Initial Study also indicates that owners and operators of constructed wetlands may be exempted from these regulations if they comply with applicable Waste Discharge Requirements (WDRs) or waivers of WDRs.

Wastewater treatment plant owners and operators often construct and operate wetlands to perform wastewater treatment services. Such wetlands are an important part of the treatment process, while simultaneously providing local environmental benefits. However, wastewater treatment plants must maintain flexibility to meet future permit requirements, which may or may not be able to be met using wetland-type treatment systems. The State Water Board should continue to exclude the facilities constructed and operated by our members from the Wetland Policy. Moreover, wastewater treatment plant owners and operators actively maintain water treatment systems consistent with the demands of their customers, and strive to provide exceptional service to protect water quality. Our members comply with the applicable state water quality control laws by obtaining and operating within the parameters of WDRs to operate wastewater treatment systems that may include constructed wetlands. Thus, our members already satisfy rigorous water quality regulations designed to protect the waters of the state, and therefore their facilities should not be subject to the Wetland Policy.

**II. *The exclusion of constructed wetlands is consistent with the United States Army Corps of Engineers' Wetlands Delineation Manual, which does not include water treatment systems in its technical definition of a wetland because a water treatment system is typically a "man-induced wetland"***

The State Water Board's Technical Advisory Team (TAT), which was tasked with recommending a scientific definition of wetlands to the State Water Board's Policy Development Team, relied heavily on the United States Army Corps of Engineers' (USACE) definition of a wetland. The TAT recognized that the State of California would benefit from having a wetland definition consistent with that used by the USACE because the State of California could use the identification and delineation procedures established by the USACE in the 1987 Wetlands Delineation Manual (Wetlands Delineation Manual).

A water treatment system operated by a wastewater treatment agency is typically a man-induced wetland, and therefore is not considered a wetland according to the Wetlands Delineation Manual. The Wetlands Delineation Manual defines a "man-induced wetland" as "... an area that has developed at least some characteristics of naturally occurring wetlands due to either intentional or incidental human activities." (Wetlands Delineation Manual at p. 82.) The Wetlands Delineation Manual notes that in virtually all cases, man-induced wetlands involve a significant change in the hydrologic regime, which may either increase or decrease the wetness of the area. (Wetlands Delineation Manual at p. 82.) The Wetlands Delineation Manual requires the USACE to consider whether the area has become significantly wetter because of a recent, man-induced change in hydrology. (Wetlands Delineation Manual at p. 83.) If so, then the USACE is to ask whether the type of activity resulting in the area being a potential man-induced

wetland is exempted by regulation or policy (from obtaining a permit if the area is found to be a wetland). (Wetlands Delineation Manual at p. 83.)

Wastewater treatment systems are generally exempt from regulation by the USACE under the Clean Water Act (CWA) because the systems are not within the definition of "waters of the United States." Specifically, federal regulations pertaining to what constitutes a water of the U.S. exempts "Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 C.F.R. § 423.11(m) which also meet the criteria of this definition) ..." (33 C.F.R. § 328.3(a)(8)). Thus, the Wetlands Delineation Manual, in conjunction with federal regulations, should lead USACE staff to the conclusion that an area with a waste treatment system is not a wetland. CVCWA supports the emphasis that the State Water Board's Wetland Policy would place on the use of the Wetlands Delineation Manual, as it currently exists, and the continued exclusion of water treatment systems from regulation under the Wetland Policy.<sup>1</sup>

In conclusion, we support the exclusion of constructed wetlands from the definition of a wetland under the Wetland Policy.

Very truly yours,



Debbie Webster  
Executive Officer

c: Pamela Creedon – Executive Officer, CVRWQCB

<sup>1</sup> CVCWA is aware that the U.S. Environmental Protection Agency has recently issued Draft Guidance on Identifying Waters Protected by the CWA. To the extent that the Wetlands Delineation Manual may be changed in the future, CVCWA's comments here should not be construed to support all future versions of the Wetlands Delineation Manual.