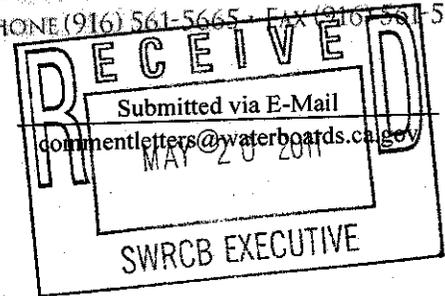




CALIFORNIA FARM BUREAU FEDERATION

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May 20, 2011

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

Re: Comment Letter – Wetland Area Protection Policy and Dredge and Fill
Regulations – Revised Notice of Preparation of Environmental Impact
Report/Initial Study Checklist

Dear Ms. Townsend:

The California Farm Bureau Federation (“Farm Bureau”) is a non-governmental, non-profit, voluntary membership California corporation whose purpose is to protect and promote agricultural interests throughout the state of California and to find solutions to the problems of the farm, the farm home, and the rural community. Farm Bureau is California’s largest farm organization, comprised of 53 county Farm Bureaus currently representing approximately 76,500 agricultural and associate members in 56 counties. Farm Bureau strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California’s resources.

Farm Bureau appreciates the opportunity to provide comments on the State Water Resources Control Board’s (“State Board”) Notice of Preparation of the Environmental Impact Report/Initial Study Checklist for the development of a Wetland Area Protection Policy and Dredge and Fill Regulations (hereinafter “Policy” or “Project”). Farm Bureau has been actively engaged in this process, including serving as a stakeholder on the agriculture, timber, and range stakeholder group. Nevertheless, Farm Bureau continues to have questions and concerns regarding the development of the Policy and its regulation of wetlands and riparian areas, as well as the Policy’s overall effect.

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Proper Environmental Review Must Be Conducted

As stated within the Initial Study, the State Board will conduct a "program level analysis" of the Project. (Initial Study, p. 1.) A program or programmatic environmental impact report ("EIR") generally establishes a framework for tiered or project-level environmental documents that are prepared in accordance with the overall program, and enables the agency to examine the overall effects of the proposed course of action and to take steps to avoid unnecessary adverse environmental effects. (See CEQA Guidelines, §15168(a).) A Program EIR is an important document because it establishes the basic environmental analysis for the *entire* project. As currently drafted, the Initial Study outlines a cursory Project with undefined environmental impacts. Additionally, little to no information is provided regarding the various Project phases which make up the Project. Given the lack of detail about the scope of the Project, the resulting regulatory Policy, and the failure to include Project alternatives, any "program level analysis" will be futile since the information currently described is vague and does not include any key details that are necessary in order to properly assess potential impacts.

In addition to the vague nature of the information provided in the Initial Study, no information is given within the Initial Study indicating that cumulative impacts will be properly considered with the program EIR. An advantage of a program EIR is to "ensure consideration of cumulative impacts that might be slighted in a case-by-case analysis." (CEQA Guidelines, § 15168(b)(2).) However, as outlined in the Initial Study, the program EIR for Phase 1 will not ensure proper analysis of impacts. By breaking the Project up into phases with each phase and each project within each phase receiving independent environmental review, environmental impacts will be conducted on a "case-by-case" basis, in direct contrast to the goals and requirements of CEQA. Cumulative impacts will not be able to be properly evaluated given the independent nature of the proposed environmental review. Further, the intent of a program EIR is to deal "with subsequent activities if it deals with the effects of the program as specifically and comprehensively as possible." (CEQA Guidelines, § 15168(c)(5).) By only evaluating the components of Phase 1 within this Initial Study and subsequent EIR, comprehensive analysis of the Policy's impacts on land use, especially agriculture, will not be properly considered.

The Initial Study and Subsequent Environmental Review Must Contain Adequate Environmental Review and Must Not Defer Analysis

The Initial Study improperly concludes that impacts to agriculture will be "less than significant with mitigation incorporated." (Initial Study, p. 24.) The Initial Study fails to properly acknowledge reasonably foreseeable impacts to agricultural lands and agricultural resources, as well as measures that could be utilized for mitigation purposes. Rather, the Initial Study simply states that "future actions would be required to undergo project-level CEQA review." (*Id.*) By deferring all discussion, analysis, and evaluation of significant impacts to independent later dates, piecemeal review of environmental impacts, especially cumulative impacts, will occur. Segmentation of a program is

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improper as CEQA precludes piecemeal environmental review. (See CEQA Guidelines, § 15126.4(a)(1)(B).) “There is no dispute that CEQA forbids ‘piecemeal’ review of the significant environmental impacts of a project.” (*Berkeley Keep Jets Over the Bay Comm. v. Bd. of Port Comm’rs* (2001) 91 Cal.App.4th 1344, 1358.)

Notwithstanding the programmatic nature of the future EIR, the Initial Study proposes to improperly defer analysis of basic components of the Project, analysis of impacts, and feasibility of mitigation measures to individual future actions, which is contrary to the basic principles of CEQA. (CEQA Guidelines, § 15126.4(a)(1)(B).) The court in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal. 4th 412, 431 spoke directly on the issue of deferring environmental review:

While proper tiering of environmental review allows an agency to defer analysis of certain details of later phases of long-term linked or complex projects until those phases are up for approval, CEQA’s demand for meaningful information “is not satisfied by simply stating information will be provided in the future.” (*Santa Clarita, supra*, 106 Cal.App.4th at p. 723.) As the CEQA Guidelines explain: “Tiering does not excuse the lead agency from adequately analyzing reasonably foreseeable significant environmental effects of the project and does not justify deferring such analysis to a later tier EIR or negative declaration.” (Cal. Code Regs., tit. 14, § 15152, subd. (b).)

Farm Bureau respectfully requests that environmental review for all phases of the Project be conducted at the earliest stage possible and contain legally adequate and appropriate environmental analysis of all impacts, especially impacts on agricultural resources. Even when conducting a program EIR, which analyzes environmental impacts on a “macroscopic” level, impacts to agricultural resources must be conducted since these impacts are “reasonably foreseeable.”

The Definition of “Wetlands” Should Mirror the Definition Used by the U.S. Army Corps of Engineers

The proposed Project includes a new State wetlands definition that is substantively different from the current federal wetlands definition used by the U.S. Army Corps of Engineers and U.S. Environmental Protection Agency. The Project’s proposed definition could result in regulatory uncertainty and inconsistency, including contrasting requirements, between State and federal regulations, requirements, and jurisdictions. Rather than create a new definition for wetlands, the State Board should adopt the U.S. Army Corps of Engineers wetlands definition and supporting material. (See 33 C.F.R. § 328.4(b); U.S. Army Corps of Engineers’ Wetland Delineation Manual; Wetlands Research Program; Technical Report Y-87-1 (January 1987); and applicable regional supplements.)

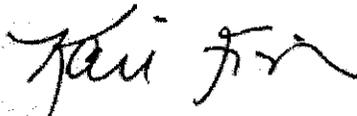
The Proposed Policy Contains Duplicative and Conflicting Regulations

As previously expressed in written comments, Farm Bureau recognizes the State Board's jurisdiction to control water quality impacts from activities in isolated wetlands no longer regulated by the federal Clean Water Act in the wake of the United States Supreme Court's 2001 decision in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers* ("SWANCC") and the 2006 decision in *Rapanos v. United States*. However, Farm Bureau is still concerned that aspects of the proposed Project, as well as the effect of the Policy, will surpass the scope of federal jurisdiction lost due to "SWANCC." This could exceed the State Board's regulatory authority and venture into areas never regulated by the U.S. Army Corps of Engineers. The State Board should limit its actions and the scope of the Policy to those recommendations outlined in the State Board's "2004 Workplan: Filling the Gaps in Wetlands Protection" and subsequent guidance provided by the Regional Water Quality Control Boards and should not go as far as regulating vast areas of riparian upland.

As stated in the Initial Study, the proposed Project "does not expand the jurisdiction beyond the limits of the Porter-Cologne Water Quality Control Act . . ." and "complements the existing regulatory framework and is intended to fill the gaps currently caused by the separate federal and State regulations and programs consolidating existing Water Board requirements in a coordinated framework." (Initial Study, p. 2.) Although the Project's purpose is a laudable goal, in actuality, the Project's purpose does not match the Project's resulting regulatory scope. The scope of the proposed regulatory Program also goes beyond merely filling the "SWANCC" gap and instead creates a new program with different regulatory standards. If fully implemented, this new regulatory Program would regulate wetlands and riparian areas over and above existing regulation by the Regional Water Boards, the U.S. Army Corps of Engineers, the U.S. EPA, the California Department of Fish and Game, and cities and counties, and may conflict with requirements within the California Environmental Quality Act and local ordinances that protect wetlands and riparian areas.

Thank you for the opportunity to provide our comments and concerns. We look forward to further involvement and discussion with the State Board on the development of the Wetland Area Protection Policy and Dredge and Fill Regulations.

Very truly yours,



Kari E. Fisher
Associate Counsel

KEF/pkh