



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

**RE: Comments of Southern California Edison Co. on the Revised Initial Study for Phase 1 of the State Water Resources Control Board's proposed Wetland Area Protection Policy and Dredge and Fill Regulations**

Dear Ms. Townsend:

On behalf of Southern California Edison Co. (SCE), thank you for the opportunity to provide comments on Phase 1 of the State Water Resources Control Board (SWRCB)'s proposed comprehensive Wetland Area Protection Policy (WAPP). SCE understands that the SWRCB is proposing the WAPP to address perceived deficiencies in federal oversight of California wetlands, and that the SWRCB proposes to implement the WAPP in three phases, with phases 2 and 3 proceeding in parallel or in sequence to Phase I. The current Phase 1 effort is being referred to as the Wetland Area Protection Policy and Dredge and Fill Regulations (Resolution No. 2008-0026).

The SWRCB is currently requesting comment on the revised initial study (IS) prepared for Phase I of the WAPP. SCE understands that the comments the SWRCB receives will be used for the scoping for an Environmental Impact Report (EIR) to be prepared for Phase I of the WAPP.

In general, SCE supports the SWRCB's effort to standardize State dredge and fill permitting actions, i.e., Clean Water Act (CWA) Section 401 water quality certifications. However, several components of the proposed WAPP would unreasonably and negatively impact SCE operations without providing benefits to water quality or wetland protection. These impacts are described in detail in the following comments.

**Comment 1: Proposed Changes to Wetland Area Definition and Delineation**

Phase 1 of the WAPP proposes a comprehensive State-wide definition of wetlands. Under the proposed language, an area would be defined as a wetland if, under normal circumstances, it:

- Is saturated by ground water or inundated by shallow surface water for a duration sufficient to cause anaerobic conditions within the upper substrate;
- Exhibits hydric substrate conditions indicative of such hydrology; and
- Either lacks vegetation or the vegetation is dominated by hydrophytes.

SCE understands that the stated purpose of the WAPP policy is to provide consistent methods to define wetlands and consistent regulatory mechanisms to implement dredge and fill activities. Consistency with the United States Army Corps of Engineers (USACE) 1987 Delineation Manual and Supplements is referenced within the IS. However, the IS then states that "these technical methods would be applied in their entirety, except for where those methods do not apply to the State definition of wetland areas." Because, the IS proposes a State wetland definition, as described above, that is different from the federal definition, SCE requests that the SWRCB provide in the forthcoming EIR, the rationale and justification why a definition different from the USACE/EPA definition is warranted, including an analysis of the economic impacts associated with the use of a different definition, and technical information and guidance

on those specific aspects of the proposed State wetland definition that deviate from the federal wetland criteria, specifically:

- The State definition uses "hydric substrate" in contrast to the federal guidance which uses hydric soils as one of the three criteria to define a wetland. Please provide the rationale for this deviation from the federal definition, the technical metrics that define a "hydric substrate" and how to apply these in the field, as well as analyze the potential effects of using a definition different from the USACE definition.
- The State definition identifies areas that "either lack vegetation or the vegetation is dominated by hydrophytes" as a criteria to define a wetland. The IS references the section of the Corps' Supplement on problematic hydrophytic vegetation to address a situation where vegetation is lacking, and notes that those procedures would be followed under the WAPP as well. But then goes on to state "However, the Project definition specifically identifies such areas as wetlands."

SCE requests that the SWRCB provide the rationale for this deviation from the federal definition and to provide additional technical detail and guidance on what the appropriate procedures to delineate these non-vegetated areas will be.

In addition to our request for additional information on the proposed change to state wetland area definitions, SCE notes that the proposed change will create more complicated wetland mapping protocols to distinguish between federally and State defined wetlands, more complicated project impact analysis, and a more complex mitigation tracking system for the Regional Water Quality Control Boards (RWQCBs) since the extent of state wetlands may differ significantly from those defined by the USACE.

SCE recommends that the SWRCB adopt the federal wetland area definition to minimize the potential for complications and additional staff commitment on the part of the SWRCB to track multiple layers of wetland definitions, calculations, and mitigation areas.

### **Comment 2: Permitting of Discharges of Dredged and Fill Material**

The Phase 1 WAPP Policy proposes to provide additional specifications on the information needed to apply for a Clean Water Act Section 401 or WDR permit and how the RWQCBs would make determinations in reviewing permit applications, based upon the 404(b)(1) Guidelines and the recently issued USACE Compensatory Mitigation Rule. The Water Boards would deny the issuance of a permit for discharge of dredge or fill material if:

- "There is a practicable alternative to the proposed discharge which would have less adverse impact on water quality, so long as the alternative does not have other significant adverse consequences. The alternative would be verified by the RWQCBs, in coordination with the USACE, for federal waters, through the alternative analysis procedure."

The alternative analysis procedure required by the USACE is implemented in accordance with the 404(b)(1) guidelines and is required only when an individual permit is issued for a project under Section 404 of the Clean Water Act (CWA). The analysis is used to determine whether the project is the least environmentally damaging practicable alternative (LEDPA) and typically requires extensive environmental, engineering, and economic analysis to demonstrate that the proposed project is considered the LEDPA. The analysis is not required for USACE Nationwide permits. Because the issuance of an individual permit must go through the National Environmental Policy Act environmental review process, the requirement to conduct an alternatives analysis is appropriate and consistent with NEPA.

The project description provided in the IS does not provide information on the process by which the RWQCB will coordinate with the USACE in determining whether there is a practicable alternative to the proposed discharge that would have a less adverse impact on water quality. Additionally, during an individual permit process, whether the USACE is the lead agency for NEPA or not, the SWRCB should be a cooperating agency in the environmental review process to ensure a consistent outcome and analysis among both NEPA and CEQA. Furthermore, because an alternative analysis is not required for projects that will result in a less than significant adverse impact to aquatic resources and are authorized under the Nationwide Permit Program, the SWRCB should provide clarification in the EIR that projects authorized under these General Permits do or do not require an alternatives analysis during the 401 water quality certification process.

Implementation of a requirement for 404(b)(1) alternatives analysis for all projects that require a 401 water quality certification or waste discharge requirement is expected to result in an onerous compliance requirement for applicants and a significant additional workload for RWQCB staff. If the SWRCB is proposing to coordinate with the USACE and only requires alternatives analysis for projects permitted under the Individual 404 program and subject to the 404(b)(1) guidelines, there will still be an added level of coordination and review required on the part of RWQCB staff that may not be necessary since the analysis is already implemented by USACE staff. Therefore, as the USACE will already be conducting this analysis, SCE recommends that the SWRCB and RWQCBs not conduct an alternatives analysis.

The SWRCB should provide information and clarification on the role (if any) the CEQA/NEPA alternatives analysis will play in the SWRCB/RWQCB consideration of proposed project impacts. SWRCB/RWQCB participation as Responsible and/or Cooperating Agencies during the CEQA/NEPA review process would seem to provide ample opportunity for the assessment of project alternatives, thereby minimizing the need for further analysis during the project's 401 water quality certification review process. As both CEQA and NEPA require that a lead agency consider project alternatives, the SWRCB should propose any potential alternatives in the CEQA/NEPA process instead of doing so separately, which will reduce the potential of the SWRCB approving a project that is different from the project approved by the lead CEQA/NEPA agencies.

SCE notes that there are several other issues related to implementation of the 404(b)(1) Guidelines, including the definition of water dependent uses and practicable alternatives, that are not addressed in the IS project description.

In conclusion, SCE requests that the SWRCB provide additional information in the forthcoming EIR on how the alternatives analysis would be implemented at the project level to facilitate meaningful analysis of the potential benefits and impacts of the proposed policy and avoid inconsistent implementation from RWQCB staff.

### **Comment 3: Proposed watershed approach for compensatory mitigation**

Phase I of the WAPP includes specific requirements applicable to compensatory mitigation required for projects where dredge and fill activities will result in permanent impacts to State wetlands. The WAPP establishes a preference, which may become a requirement, for mitigation to be within the project watershed and at sites incorporating "ecological communities of similar type to those being impacted."

In addition, as noted in the "Interest Groups and Tribal Government Representatives Meetings" WAPP establishes a sequential preference for mitigation as follows:

- (i) "Onsite"
- (ii) Mitigation bank/in-lieu fee site located: same watershed or service area
- (iii) "Offsite" within the watershed
- (iv) "Offsite" at other ecologically suitable areas in an area near impacted site."

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These mitigation preference requirements will create serious resource issues for SCE and many other permittees. USACE Section 404 requires mitigation for permanent impacts from dredge and fill activities in federally designated wetlands and waters. Except for on-site mitigation, the USACE requires the use of approved mitigation banks. These banks are often not located within the same watershed, or even in a region that is ecologically similar.

Additionally, on-site mitigation is often not an option for SCE. Many of SCE's activities occur within utility easements or Rights of Way (ROW) that are owned by others or are within federal or state lands where an agency has authority over land use. Long term management of mitigation within SCE ROW may not be feasible given the requirements established under franchise and other agreements. Other permittees will likely face similar challenges. The requirement to use "off-site" locations for mitigation would subject SCE to liability for long term operation and maintenance. As a utility, SCE does not have the resources or infrastructure in place to manage and maintain off-site mitigation projects.

In order to address the potential conflicts created by the proposed requirements for compensatory mitigation, SCE requests that the SWRCB explain how the WAPP intends to address mitigation where the applicant does not own the land where the dredge and fill activity takes place. The SWRCB needs to clarify the process for applicants, like SCE, that cannot perform on-site mitigation due to activities of the underlying property owners on private land, USFS, BLM or in franchise areas.

The SWRCB also needs to provide an alternate means for compensatory mitigation if in-kind, ecologically or hydrologically similar restoration are not available within the project watershed. Because of the requirements for mitigation established by the USACE, SCE asks the SWRCB to provide the option of access to mitigation banks outside the watershed.

SCE asks that the SWRCB define the process that it will use to coordinate with other agencies that have mitigation and mitigation banking requirements. Projects that are subject to environmental review under CEQA and/or NEPA will evaluate all potential significant project impacts, including those impacts reviewed by the SWRCB in issuing a 401 water quality certificate. The SWRCB must participate in that overall environmental review process and should propose mitigation measures in that process to ensure that project proponents are not subject to conflicting mitigation measures or multiple mitigation measures that are designed to address the same impact. For example, in addition to the USACE, compensatory mitigation for dredge and fill impacts is required by the California Department of Fish and Game (CDFG) under their Streambed Alteration Agreement (SAA) program. The CDFG encourages use of CDFG approved mitigation banks which are managed by agencies with the expertise and resources to properly manage sensitive wetlands. SCE asks the SWRCB to provide detail on how the SWRCB will coordinate with these agencies to address conflicting and/or duplicate mitigation requirements.

SCE appreciates the opportunity to comment on the SWRCB's IS, and to participate in the CEQA process as it moves forward. Please contact me directly if there is any need for additional clarification of the above comments.

Sincerely,



Paul Ahn  
Senior Environmental Specialist  
Water Quality Section  
Corporate Environment, Health & Safety  
Southern California Edison  
1218 South 5<sup>th</sup> Avenue  
Monrovia, CA 91016  
Office: (626) 462-8711